

Canada

	2022	2023	2024
Internet Freedom Status	F	F	F
A. Obstacles to Access (0-25pts)	23	23	22
B. Limits on Content (0-35pts)	32	33	32
C. Violations of User Rights (0-40pts)	32	32	32
TOTAL* (0-100)	87	88	86

*100=most free, 0=least free

**A total score of 100-70=Free, 69-40=Partly Free, 39-0=Not Free

Overview

[TO BE UPDATED IN FINAL DRAFT]

Canada remains one of the most open online environments in the world. Internet access is reliable and affordable for most of the population, although a notable digital divide persists for internet users in rural areas. Canadians enjoy strong protections for free expression and press freedom on the internet. While a recent law raised concerns that the government could seek to significantly expand its regulatory authority over online content, such concerns did not materialize during the coverage period.

Canada has a strong history of respect for political rights and civil liberties, though in recent years citizens have been concerned about laws relating to government surveillance and personal privacy. While Indigenous and other marginalized Canadians still face discrimination and economic, social, and political challenges, the federal government has acknowledged and made some moves to address these issues.

Key Developments, June 1, 2023 - May 31, 2024

- [TO BE UPDATED IN FINAL DRAFT]

A. Obstacles to Access (0-25 points)

	2022	2023	2024
A1: Do infrastructural limitations restrict access to the internet or the speed and quality of internet connections? (0-6 points)	6	6	6

Both fixed-line and mobile internet penetration rates have remained relatively steady in Canada. Mobile service providers continue to deploy several newer technologies to provide mobile broadband service, and fifth-generation (5G) technology network coverage reached 91.4 percent as of 2022, up almost 4 percentage points from the previous year.¹ According to 2022 data from the International Telecommunication Union (ITU), Canada has a 43 percent fixed broadband penetration rate and a 86 percent mobile broadband penetration rate.²

Broadband service of at least 25 megabits per second (Mbps) reached 97.7 percent household availability in 2022, according to the CRTC, the regulatory body that oversees the communications industry.³ In 2019, the CRTC shifted its focus to "high-quality" internet service, defined as offering 50 Mbps download speeds, 10 Mbps upload speeds, and unlimited data transfers, with the goal of 90 percent household availability by 2021, and 100 percent availability

GUIDELINES

Score Table

FOTN 2023 scores reflect the internet freedom environment within the 12-month coverage period between June 1, 2023 and May 31, 2024.

In the table to the left, please add all points from the sub-question tables below for each category and the total.

Please update the report using Track Changes

A1 sub-questions:

- Do individuals have access to high-speed internet services at their home, place of work, libraries, schools, and other venues, as well as on mobile devices?
- Does poor infrastructure (including unreliable electricity) or catastrophic damage to infrastructure (caused by events such as natural disasters or armed conflicts) limit residents' ability to access the internet?

¹ Canadian Radio-television and Telecommunications Commission, "Current trends - Mobile wireless," accessed March 2024, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/mob.htm>.

² International Telecommunications Union, "Digital Development Dashboard (Canada)," accessed September 2023, <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/Digital-Development.aspx>.

³ Canadian Radio-television and Telecommunications Commission, "Current trends - High-speed broadband," accessed March 2024, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

by 2031,⁴ which was identified as Canada's "Universal Service Objective" in a landmark 2016 policy decision.⁵ The government's 2024 Federal budget advanced these timelines, stating that the "government remains committed to its target of ensuring 98 per cent of Canadians have access to high-speed internet by 2026 and 100 per cent of Canadians by 2030."⁶ Canada is on track with these goals, moving from 91.4 percent availability in 2021 (thus achieving the first objective) to 93.1 percent in 2022. Additionally, 75.4 percent of all subscribers having service of at least 50 Mbps download speeds and 10 Mbps upload speeds as of the second quarter of 2023.⁷

In conjunction with the 2016 decision, the CRTC declared high-speed internet access a "basic telecommunications service" and established a C\$750 million dollar (\$554 million) fund to reach those targets.⁸ In 2018, the CRTC announced criteria for the fund's use.⁹ A second round of calls for project applications was opened in November 2019,¹⁰ and a third round of calls for project applications opened in November 2022,¹¹ with a focus on remote transportation corridors and satellite-dependent communities. The distribution of these funds continued through 2023, with over C\$300 million (\$167.4 million) awarded as of March 2024.¹² The CRTC's fund is part of a larger commitment to broadband access in Canada through the C\$3.225 billion (\$2.38 billion) Universal Broadband Fund (see A2).¹³

While robust infrastructure generally safeguards against power shortages or blackouts that limit Canadians' internet access, a failure following a maintenance update caused a country-wide mobile and internet outage for customers of one of the major internet service providers (ISPs), Rogers, that lasted 15 hours in July 2022.¹⁴ In light of ongoing concern about this incident, the CRTC hired an outside firm in May 2023 to investigate the outage,¹⁵ but as of March 2024, no report has been released.

	2022	2023	2024
A2: Is access to the internet prohibitively expensive or beyond the reach of certain segments of the population for geographical, social, or other reasons? (0–3 points)	2	2	2

Internet access is not prohibitively expensive or beyond the reach of most segments of the population, although a digital divide in terms of geography persists, and people with lower incomes struggle to afford access. The government named universal access as the first of 10 draft principles for a digitally connected Canada in its October 2019 Digital Charter.¹⁶

A2 sub-questions:

- Do financial constraints—such as high prices for internet services, excessive taxes imposed on such services, or state manipulation of the relevant markets—make internet access prohibitively expensive for large segments of the population?

⁴ Canadian Radio-television and Telecommunications Commission, "Departmental Plan 2022-2023," March 2, 2022, <https://crtc.gc.ca/eng/publications/reports/dp2022/dp2022.htm>

⁵ CRTC Telecom Regulatory Policy 2016-496, "Modern telecommunications services – The path forward for Canada's digital economy," December 21, 2016, <https://crtc.gc.ca/eng/archive/2016/2016-496.htm>.

⁶ Government of Canada, "Budget 2024 Fairness for Every Generation," Chapter 3, Figure 3.2, <https://budget.canada.ca/2024/report-rapport/chap3-en.html#s3-2>.

⁷ Canadian Radio-television and Telecommunications Commission, "Current trends - High-speed broadband," accessed March 2024, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

⁸ "CRTC establishes fund to attain new high-speed Internet targets," Government of Canada News Release, December 21, 2016, <https://www.canada.ca/en/radio-television-telecommunications/news/2016/12/crtc-establishes-fund-attain-new-high-speed-internet-targets.html>.

⁹ Emily Jackson, "CRTC reveals criteria for \$750M broadband fund for rural internet access," *The National Post*, September 27, 2018, <https://business.financialpost.com/telecom/crtc-reveals-criteria-for-750m-broadband-fund-for-rural-internet-access>.

¹⁰ CRTC Telecom Notice of Consultation CRTC 2019-372-2, April 27, 2020, <https://crtc.gc.ca/eng/archive/2019/2019-372-2.htm>.

¹¹ CRTC Telecom Notice of Consultation CRTC 2022-325, November 30, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-325.htm>.

¹² CRTC, "Broadband Fund – Projects selected for funding," <https://crtc.gc.ca/eng/internet/select.htm>, updated to March 18, 2024.

¹³ Government of Canada, "Universal Broadband Fund," November 8, 2022, <https://ised-isde.canada.ca/site/high-speed-internet-canada/en/universal-broadband-fund>.

¹⁴ Malu Cursino, "Canada's internet outage caused by 'maintenance'," BBC, July 10, 2022, <https://www.bbc.com/news/world-us-canada-62110358>

¹⁵ Marina von Stackelberg, "CRTC hires private company to investigate 2022 Rogers outage," *CBC News*, September 14, 2023, <https://www.cbc.ca/news/politics/crtc-rogers-outage-investigation-1.6963052>.

¹⁶ "Canada's Digital Charter in Action: A Plan by Canadians, for Canadians," Innovation, Science and Economic Development Canada, October 23, 2019, https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00109.html.

Mobile broadband data remains expensive compared to fixed-line broadband data. High-speed, fixed-line access remains relatively affordable due to robust competition; prices became even more competitive when the CRTC reduced the price of wholesale high-speed internet access in 2016,¹⁷ and again in March 2023.¹⁸ Following the March 2023 review, in November 2023, the CRTC ordered existing large incumbent telephone companies to provide smaller, wholesale-based ISPs with “workable wholesale access” to their fibre-to-the-premises (FTTP) networks in Quebec and Ontario, a decision meant to lower consumer prices and spur competition (see A4).¹⁹ According to 2022 ITU data, a 5 gigabyte (GB) fixed broadband connection costs 1.0 percent of gross national income (GNI) per capita, while a 2 GB mobile broadband connection costs 0.9 percent of GNI per capita.²⁰

Perhaps the most important obstacle to availability and ease of access is geography: 82 percent of Canada’s population lives in urban areas.²¹ While providing “reliable and affordable telecommunications services of high quality” to rural areas is enshrined in law,²² affordable high-speed internet service is less available in more isolated areas, especially in the vast northern territories. Connectivity projects initiated under the CRTC’s recent call for applications (see A1), however, will help to lessen this divide in the northern territories.

While high-speed internet access has historically been more expensive in rural areas than in cities, in 2022, the CRTC reported that rural customers paid C\$4 (\$2.94) less on average than their urban counterparts for the same CRTC-defined “high quality” fixed-broadband service with 50 Mbps download speeds, 10 Mbps upload speeds, and unlimited data transfers.²³ Though this was due to a significant year-to-year drop in rural prices from 2021 to 2022, this may only be a temporary situation.

Major ISPs generally offer services with data caps, resulting in increased fees for users who exceed the limit.. The federal government’s 2023 budget promised a crackdown on “junk fees,” including internet overage charges, which may help to lower prices for both wireless and wired connectivity;²⁴ this may help to explain the drop in prices overall.

When considering the availability of CRTC-defined high-quality service, the urban-rural divide is extremely significant: service with 50 Mbps download speeds, 10 Mbps upload speeds, and unlimited data transfers is available to 99.4 percent of urban households, but only 67.4 percent of rural households.²⁵ The divide may finally be shrinking, however, as the 53-percentage point spread from 2019 decreased to 32 percentage points in 2022.²⁶

The government has generally taken a patchwork approach to improving connectivity in remote communities, with different government departments providing funds and strategies seemingly without a central, detailed plan. In 2019, the government pledged to spend between C\$5 billion

- Are there significant differences in internet penetration and access based on geographical area, or for certain ethnic, religious, gender, LGBT+, migrant, and other relevant groups?
- Do pricing practices, such as zero-rating plans, by service providers and digital platforms contribute to a digital divide in terms of what types of content individuals with different financial means can access?

¹⁷ Canadian Radio-television and Telecommunications Commission, Telecom Order CRTC 2016-396, October 6, 2016, <https://crtc.gc.ca/eng/archive/2016/2016-396.htm>.

¹⁸ CRTC news release, “CRTC launches review of approach to Internet services competition and lowers some wholesale rates effectively immediately,” March 8, 2023, <https://www.canada.ca/en/radio-television-telecommunications/news/2023/03/crtc-launches-review-of-approach-to-internet-services-competition-and-lowers-some-wholesale-rates-effectively-immediately.html>.

¹⁹ Canadian Radio-television and Telecommunications Commission, “Telecom Decision CRTC 2023-358 – Review of the wholesale high-speed access service framework – Temporary access to fibre-to-the-premises facilities over aggregated wholesale high-speed access services,” November 6, 2023, <https://crtc.gc.ca/eng/archive/2023/2023-358.htm>.

²⁰ International Telecommunications Union, “Digital Development Dashboard (Canada),” accessed September 2023, <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/Digital-Development.aspx>.

²¹ Statistics Canada, “Population growth in Canada’s rural areas, 2016 to 2021,” February 9, 2022, <https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-x/2021002/98-200-x2021002-eng.cfm>.

²² *Telecommunications Act*, S.C. 1993, c.38, section 7(b), <https://laws-lois.justice.gc.ca/eng/acts/T-3.4/FullText.html>.

²³ Canadian Radio-television and Telecommunications Commission, “Current trends - High-speed broadband,” accessed March 2024, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

²⁴ Government of Canada, “Budget 2023 A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future,” Chapter 1, Section 1.1, <https://www.budget.canada.ca/2023/report-rapport/chap1-en.html#a2>.

²⁵ Canadian Radio-television and Telecommunications Commission, “Current trends - High-speed broadband,” accessed March 2024, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

²⁶ Canadian Radio-television and Telecommunications Commission, “Current trends - High-speed broadband,” accessed March 2024, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

(\$3.7 billion) and C\$6 billion (\$4.4 billion) to improve rural broadband services over 10 years.²⁷ In November 2022, Prime Minister Trudeau announced that C\$475 million (\$351 million) would be added to the Universal Broadband Fund, bringing the initiative to C\$3.225 billion (\$2.38 billion).²⁸ The minister of rural economic development proposed a comprehensive strategy for improving connectivity back in 2019,²⁹ and it may finally be achieving some tangible results. In December 2023, for instance, the government announced funding, through the CRTC's fund (see A1), for a project to connect all the communities of Nunavut, Canada's largest Territory, with high-speed satellite internet service.³⁰

There is also a significant access gap in terms of income. In 2018, 80.9 percent of households in the lowest income quartile had Internet access at home, as opposed to over 99.6 percent of those with an income in the highest quartile.³¹ The government has recognized the need for low-cost internet for low-income families, and provides low-income families and senior citizens with subsidized, very low-cost internet packages through the Connecting Families Initiative.³²

Internet connections are widely available in public spaces such as cafés, shopping malls, and libraries, generally free of charge.

	2022	2023	2024
A3: Does the government exercise technical or legal control over internet infrastructure for the purposes of restricting connectivity? (0–6 points)	6	6	6

The government does not exercise technical or legal control over the internet infrastructure for censorship. The introduction of the Online Harms Act (see B3) may have an impact in the future. Authorities do not restrict access to any social media platforms or communications apps. In early 2023, the federal government and all provincial governments banned TikTok from government-issued phones over security and privacy concerns, but no restrictions were placed on personal devices (see B1).³³

The government has not centralized the telecommunications infrastructure. However, given the vertical integration of the marketplace, the infrastructure is controlled by a small number of companies, which could theoretically facilitate greater control of content and the implementation of surveillance technologies.

A3 sub-questions:

- Does the government (or the de-facto government in a given area) restrict, or compel service providers to restrict, internet connectivity by slowing or shutting down internet connections during specific events (such as protests or elections), either locally or nationally?
- Does the government centralize internet infrastructure in a manner that could facilitate restrictions on connectivity?
- Does the government block, or compel service providers to block, social media platforms and communication apps that serve in practice as major conduits for online information?
- Does the government block, or compel service providers to block, certain protocols, ports, and functionalities within such platforms and apps (e.g., Voice-over-Internet-Protocol or VoIP, video streaming, multimedia messaging, Secure Sockets Layer or SSL), either permanently or during specific events?
- Do restrictions on connectivity disproportionately affect

²⁷ Government of Canada (The Honourable William Francis Morneau, Finance Minister), "Budget 2019 – Investing in the Middle Class," March 19, 2019, <https://www.budget.gc.ca/2019/docs/plan/budget-2019-en.pdf>; See also: Government of Canada, "Connecting Canadians," Chapter 2, Part 3, <https://www.budget.gc.ca/2019/docs/plan/chap-02-en.html#Access-to-High-Speed-Internet-for-All-Canadians>.

²⁸ Prime Minister of Canada, "Connecting Canadians with high-speed Internet in New Brunswick and across Canada," November 8, 2022, <https://www.pm.gc.ca/en/news/news-releases/2022/11/08/connecting-canadians-high-speed-internet-new-brunswick-and-across>.

²⁹ Innovation, Science and Economic Development Canada, "High-Speed Access for All: Canada's Connectivity Strategy," April 11, 2022, <https://ised-isde.canada.ca/site/high-speed-internet-canada/en/canadas-connectivity-strategy/high-speed-access-all-canadas-connectivity-strategy>.

³⁰ CRTC news release, "CRTC takes action to bring high-speed Internet to all communities in Nunavut," December 20, 2023, <https://www.canada.ca/en/radio-television-telecommunications/news/2023/12/crtc-takes-action-to-bring-high-speed-internet-to-all-communities-in-nunavut.html>.

³¹ Library of Parliament, "The State of Broadband Internet in Canada," HillNotes, May 13, 2020, <https://hillnotes.ca/2020/05/13/the-state-of-broadband-internet-in-canada-2/>.

³² Innovation, Science and Economic Development Canada, "Connecting Families Initiative," March 6, 2024, <https://ised-isde.canada.ca/site/connecting-families/en>.

³³ Joey Chini, "Most Canadian provinces banning or considering banning TikTok from government-issued phones," CTV News, March 1, 2023, <https://www.ctvnews.ca/canada/most-canadian-provinces-banning-or-considering-banning-tiktok-from-government-issued-phones-1.6294870>.

marginalized communities, such as inhabitants of certain regions or those belonging to different ethnic, religious, gender, LGBT+, migrant, diaspora, and other relevant groups?

	2022	2023	2024
A4: Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers? (0–6 points)	5	5	4

Score Change: The score decreased from 5 to 4 because following the merger of Rogers and Shaw, Rogers has used the merger to reinforce a dominant market position.

There are some legal and economic obstacles that restrict the diversity of service providers, although the market remains relatively open. Specifically, the legal requirements for Canadian ownership of service providers, combined with the high costs of entry and infrastructure, has led to market concentration, especially for mobile service.

To operate as a Canadian telecommunications provider, a company must meet the requirements in Section 16 of the Telecommunications Act. The telecommunications market has been dominated in recent years by the five largest companies (Bell, Québecor, Rogers, Shaw, and TELUS), which accounted for approximately 91 percent of the total telecommunications market as of January 2023, based on market capitalization.³⁴

The telecommunications market in Canada has become even more concentrated following the completed merger of two of the five largest companies, Rogers and Shaw. After the CRTC approved the broadcasting portion of the merger in 2021,³⁵ the government, through the minister of innovation, science and industry, gave final approval to the merger, valued at C\$26 billion (\$19.2 billion), on March 31, 2023;³⁶ the deal was finalized three days later, on April 3.³⁷ On orders of the government, as a condition to the merger, the deal excluded Shaw's wireless division, Freedom Mobile, which was purchased by Québecor's Vidéotron. The government claimed that this act will actually increase competition and affordability in the telecommunications sector,³⁸ but commentators were unconvinced.³⁹ These concerns have been borne out by recent developments: in February 2024, a deputy commissioner for Canada's Competition Bureau testified in Parliament that prices for certain mobile plans became more expensive since the merger,⁴⁰ and in August 2023, Rogers filed a court challenge against the fees set by the CRTC that Québecor would pay Rogers for access to its cellular network.⁴¹

Though the Canadian government has taken some recent actions to boost competition in the fixed-line market, concerns remain that smaller ISPs are unable to compete with the major providers. As part of a review meant to increase competition and lower prices (see A2), in November 2023, the CRTC ordered large telecommunications companies, within six months, to offer smaller providers access to their FTTP networks in the highly-populated provinces Quebec and Ontario, allowing these wholesale providers to offer more competitive services in these

A4 sub-questions:

- Is there a legal or de facto monopoly on the provision of fixed-line, mobile, and public internet access?
- Does the state place extensive legal, regulatory, or economic requirements on the establishment or operation of service providers?
- Do operational requirements, such as retaining customer data or preventing access to certain content, place an onerous financial burden on service providers?

³⁴ Floella Church, "Most Popular Canadian Telecommunication Companies in 2023," Canada Telecommunications, November 15, 2022, <https://www.ctca.ca/most-popular-canadian-telecommunication-companies/>.

³⁵ CRTC, Broadcasting Decision CRTC 2022-76, March 24, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-76.htm>.

³⁶ Anja Karadeglija, "Liberal government approves Rogers-Shaw, wireless assets to go to Quebec," National Post, March 31, 2023 <https://nationalpost.com/news/politics/liberal-government-approves-rogers-shaw-wireless-assets-quebecor>.

³⁷ "Rogers takeover of Shaw finalized, deal now official," CBC News, April 3, 2023, <https://www.cbc.ca/news/business/rogers-shaw-merger-official-1.6799566>.

³⁸ Canada (Department of Innovation, Science and Economic Development Canada), "Statement from Minister Champagne concerning competition in the telecommunication sector, March 31, 2023, <https://www.canada.ca/en/innovation-science-economic-development/news/2023/03/statement-from-minister-champagne-concerning-competition-in-the-telecommunication-sector.html>.

³⁹ Michael Geist, "Competition in Canada Takes Another Hit: Government Gives Go Ahead for Rogers – Shaw Merger," March 31, 2023, <https://www.michaelgeist.ca/2023/03/competition-in-canada-takes-another-hit-government-gives-go-ahead-for-rogers-shaw-merger/>.

⁴⁰ The Canadian Press, "Some phone plans pricier than before Rogers-Shaw deal: watchdog," CBC News, February 26, 2024, <https://www.cbc.ca/news/canada/british-columbia/cellphone-plans-not-cheap-roger-shaw-merger-1.7126222>.

⁴¹ Anja Karadeglija, "Rogers in court seeking to charge higher network rates to Quebecor months after Shaw takeover," National Post, August 31, 2023, <https://nationalpost.com/news/politics/rogers-seeking-higher-rates-for-quebecor>.

markets.⁴² In response, Bell (the ISP most affected by the decision) announced in that month that it would slash capital spending by C\$1 billion (\$736,000,000),⁴³ sought an appeal of the decision (although a temporary stay of the order was denied),⁴⁴ and in February 2024, even petitioned the Federal cabinet to overturn it.⁴⁵

Canadians generally have a choice of wireless internet providers, all of which are privately owned. With the launch of Freedom Mobile's first nationwide plan in May 2023,⁴⁶ there are at least four providers to choose from in all markets, although providers vary from region to region and some providers are restricted to urban areas. Restrictions on foreign investment and ownership impose barriers to entry, limiting competition in the telecommunications market.⁴⁷ The provision of access services is subject to regulation, with rules on tower-sharing and domestic-roaming agreements and a consumer regulator to address consumer concerns. Despite these efforts, the Industry Minister acknowledged in January 2024 that there is still a lack of adequate competition in the mobile marketplace.⁴⁸

Three mobile service providers dominate the market, with Bell, TELUS, and Rogers accounting for 88.3 percent of the mobile market's revenue in 2021.⁴⁹ Their market share has remained relatively steady over the years. These companies are also leaders in the provision of fixed-line internet service (via phone lines or cable), along with Cogeco, and Vidéotron. While Canadians generally enjoy a choice of fixed-line internet providers, the available choices vary from region to region. There is often only one choice per technology type, leading to a public perception that options are limited and prices kept artificially high. This perception is not without merit, as Canada's wireless prices continue to be rated among the highest in the world.⁵⁰ However, wireless prices have continued to fall in recent years. In February 2024, Statistics Canada reported that overall prices for new plans were 26.5 percent lower than they were during the same month in 2023.⁵¹

	2022	2023	2024
A5: Do national regulatory bodies that oversee service providers, digital platforms, and the internet more broadly fail to operate in a free, fair, and independent manner? (0–4 points)	4	4	4

The CRTC largely operates independently of the government. The government appoints the CRTC chairperson and commissioners without public consultation, but they are not subject to political pressure. In some cases, the government has provided guidance on policy expectations regarding telecommunications regulations, but its input is nonbinding. Moreover, CRTC decisions can be appealed, or a government review can be requested. The government has rarely overturned CRTC decisions.

A5 sub-questions:

- Are there explicit legal guarantees that protect the independence and autonomy of regulatory bodies overseeing the internet (exclusively or as part of a broader mandate) from political or commercial interference?
- Is the process for appointing members of regulatory bodies transparent and representative of different stakeholders' legitimate interests?
- Are decisions taken by regulatory bodies relating to the internet seen

⁴² Canadian Radio-television and Telecommunications Commission, "Telecom Decision CRTC 2023-358 – Review of the wholesale high-speed access service framework – Temporary access to fibre-to-the-premises facilities over aggregated wholesale high-speed access services," November 6, 2023, <https://crtc.gc.ca/eng/archive/2023/2023-358.htm>.

⁴³ Derek Decloet, "Canada's largest telecom BCE cuts spending after blow from regulator," *Financial Post*, November 6, 2023, <https://financialpost.com/telecom/canada-largest-telecom-bce-cuts-spending-crtc>.

⁴⁴ Sammy Hudes, "Federal court denies BCE stay of CRTC decision allowing access to its fibre network," *Financial Post*, February 12, 2024, <https://financialpost.com/telecom/federal-court-denies-bce-stay-crtc-decision-fibre-network>.

⁴⁵ Alexandra Posadzki, "BCE asks cabinet to overturn CRTC decision on competitors' network access," *The Globe and Mail*, February 5, 2024, <https://www.theglobeandmail.com/business/article-bce-asks-cabinet-to-overturn-crtc-decision-on-competitors-network/>.

⁴⁶ Québecor, "Freedom Mobile launches its first-ever true nationwide mobile plan, including U.S. roaming, at an unprecedented price," May 25, 2023, <https://www.quebecor.com/en/-/freedom-mobile-lance-son-tout-premier-forfait-mobile-pancanadien-incluant-l-itin-c3-a9rance-aux-c3-a9tats-unis-c3-a0-prix-jamais-vu>.

⁴⁷ Emily Jackson, "Canada has one of the world's most protected telecom sectors — and the rates to show for it," *Toronto Star*, July 24, 2018, <https://financialpost.com/telecom/tight-reins-leaves-our-telecom-sector-open-to-criticism-but-sadly-not-competition>.

⁴⁸ Anis Heydari, "Switch carriers? How? Ottawa gives mixed messages over rising mobile prices," January 6, 2024, *CBC News*, <https://www.cbc.ca/news/business/mobile-wireless-pricing-competition-1.7076073>.

⁴⁹ CRTC, "Data – Retail mobile," November 2022, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/cmrd.htm>, Tab MB-15.

⁵⁰ Tristan Hopper, "Canada's wireless costs 'continue to be the highest or among the highest in the world': Finnish report," *National Post*, October 10, 2021, <https://nationalpost.com/news/canada/canadas-wireless-costs-continue-to-be-the-highest-or-among-the-highest-in-the-world-finnish-report>. Katie Pederson, "Why are Canadians' cellphone bills higher than other countries?" *CBC News*, January 13, 2023, <https://www.cbc.ca/news/business/marketplace-high-cell-phone-bills-1.6711205>.

⁵¹ Canadian Press, *Statistics Canada says telecom prices continue to come down, driving inflation lower*, MSN.com, March 19, 2024, <https://www.msn.com/en-ca/money/topstories/statistics-canada-says-telecom-prices-continue-to-come-down-driving-inflation-lower/ar-BB1ka5U3>.

The CRTC's regulatory powers extend to internet access, but traditionally not to internet content, a principle known as the "new media exemption." The CRTC's position to refrain from internet content regulation dates to 1999 and has been reinforced on numerous occasions since,⁵² including by the Supreme Court of Canada (SCC).⁵³ Amendments to Canada's Broadcasting Act in the form of Bill C-11, called the "Online Streaming Act," proposed in February 2022⁵⁴ and ultimately made law in April 2023,⁵⁵ threaten to alter Canada's media landscape and expand the scope of the CRTC's regulatory powers. It potentially allows for regulation of the internet and its content in new and myriad ways, effectively discarding the new media exemption and regulating content from non-Canadian sources (see B3).⁵⁶

B. Limits on Content (0-35 points)

	2022	2023	2024
B1: Does the state block or filter, or compel service providers to block or filter, internet content, particularly material that is protected by international human rights standards? (0–6 points)	5	5	5

The government does not generally block or filter online content or require service providers to do so. Project Cleanfeed Canada allows ISPs to block child sexual abuse imagery hosted outside of Canada, restrictions that are permissible under international human rights standards (see B3).

In February and March 2023, the federal government⁵⁷ and all Canadian provinces⁵⁸ banned the use and download of TikTok on government-issued devices, citing cybersecurity and privacy concerns over the Chinese-owned video platform. The actions followed similar bans in the United States and European Union (EU). No such restrictions have been implemented for personal devices. In March 2024, it was revealed that the Canadian government had secretly ordered a national security review of TikTok in September 2023, and the review is ongoing.⁵⁹

In November 2019, a court ordered all of Canada's major ISPs to block several domains associated with a service that sold copyright-infringing programming. Several large media companies petitioned the Federal Court in *Bell Media Inc. v. GoldTV.Biz* to order the domains' blocking for rebroadcasting their programming without permission. Twelve domains and subdomains were blocked under the order, which permitted the media companies to seek further blocking orders for websites infringing on their programming.⁶⁰ Legal experts criticized the decision on numerous grounds, including by calling it an overreach by the court into a policy issue that should be decided by Parliament or the CRTC.⁶¹ The decision was appealed by ISP TekSavvy, which the Federal Court of Appeal rejected in May 2021, concluding that the lower court judge did have the authority to grant website blocking orders (see B2).⁶² In March 2022, the SCC declined to hear TekSavvy's second appeal, ending the case.⁶³

to be fair and to take meaningful notice of comments from stakeholders in society?

- Are decisions taken by regulatory bodies apolitical and independent from changes in government?
- Do decisions taken by regulatory bodies protect internet freedom, including by ensuring service providers, digital platforms, and other content hosts behave fairly?

B1 sub-questions:

- Does the state use, or compel service providers to use, technical means to restrict freedom of opinion and expression, for example by blocking or filtering websites and online content featuring journalism, discussion of human rights, educational materials, or political, social, cultural, religious, and artistic expression?
- Does the state use, or compel service providers to use, technical means to block or filter access to websites that may be socially or legally problematic (e.g., those related to gambling, pornography, copyright violations, illegal drugs) in lieu of more effective remedies, or in a manner that inflicts collateral damage on content and activities that are protected under international human rights standards?
- Does the state block or order the blocking of entire social media platforms, communication apps, blog-hosting platforms, discussion forums, and other web domains for the purpose of censoring the content that appears on them?

⁵² *Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356*, August 6, 2015, <https://crtc.gc.ca/eng/archive/2015/2015-355.htm>.

⁵³ "Reference re Broadcasting Act, 2012 SCC 4," February 9, 2012, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7989/index.do>.

⁵⁴ Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, first reading February 2, 2022, available at <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/first-reading>.

⁵⁵ Richard Raycraft, "Controversial bill to regulate online streaming becomes law," *CBC News*, April 27, 2023, <https://www.cbc.ca/news/politics/c11-online-streaming-1.6824314>.

⁵⁶ See e.g. Michael Geist, "The CRTC Provides an Advance Preview of Bill C-11 Regulation: Pretty Much Any Service, Anywhere, Any Terms and Conditions," March 9, 2022, <https://www.michaelgeist.ca/2022/03/the-crtc-provides-an-advance-preview-of-bill-c-11-regulation-pretty-much-any-service-anywhere-any-terms-and-conditions/>.

⁵⁷ "Citing security concerns, Canada bans TikTok on government devices," *NPR*, February 28, 2023, <https://www.npr.org/2023/02/28/1160004862/citing-security-concerns-canada-bans-tiktok-on-government-devices>.

⁵⁸ "Ontario bans TikTok on government devices," *CBC News*, March 9, 2023, <https://www.cbc.ca/news/canada/toronto/ontario-tiktok-ban-1.6773742>.

⁵⁹ Anja Karadeglija (Canadian Press), "Ottawa secretly ordered national security review of TikTok," *National Post*, March 14, 2024, <https://nationalpost.com/news/canada/ottawa-secret-review-of-tiktok>.

⁶⁰ 2019 FC 1432, November 15, 2019, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>.

⁶¹ Michael Geist, "Fool's Gold: Why a Federal Court Judge Was Wrong To Issue a Website Blocking Order Against GoldTV," November 19, 2019, <http://www.michaelgeist.ca/2019/11/fools-gold-why-a-federal-court-judge-was-wrong-to-issue-a-website-blocking-order-against-goldtv/>.

⁶² *Teksavvy Solutions Inc. v. Bell Media Inc.*, 2021 FCA 100, <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/497659/index.do>.

⁶³ Supreme Court of Canada Docket, case # 39876, <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=39876>.

The media companies from the *Bell Media* case took the next step in seeking site-blocking in October 2021, when they filed for a case seeking a “dynamic” site-blocking order. In May 2022, the Federal Court granted a preliminary injunction that required ISPs to block internet protocol (IP) addresses of websites showing pirated content (specifically, live streamed professional hockey games) in real time.⁶⁴ The temporary order, which lasted the duration of the professional hockey season, is considered the first of its kind in North America.⁶⁵ The order was quietly renewed in November 2022 for the 2022–23 National Hockey League (NHL) season.⁶⁶ In December 2022, Bell Media secured a similar site-blocking order during the 2022 FIFA World Cup.⁶⁷ Rogers and TVA, a Quebec-based broadcaster, obtained a similar site-blocking order in July 2023 regarding Toronto Blue Jays Major League Baseball (MLB) games,⁶⁸ suggesting that these dynamic site-blocking orders have become a regular fixture of efforts to combat copyright violations in Canada.

In January 2021, the CRTC launched a public consultation “to strengthen Canadians’ online safety” by blocking certain sites infected with botnets.⁶⁹ The plan has come under fire by commentators,⁷⁰ and submissions to the consultation process from a broad range of industry actors almost universally opposed it.⁷¹ In June 2022, the CRTC released an enforcement decision that confirmed botnets need to be regulated, provided a framework for doing so, and required a CRTC working group to present a plan to block such websites within nine months.⁷² After several months of gathering submissions,⁷³ the working group presented a draft of this plan in April 2023, which advised blocking botnet command-and-control servers at the IP layer and ensuring that the blocking framework would not be used for criminal or political purposes. The framework did not provide specifics on how the blocking system would work, only general principles.⁷⁴ While there were no developments on this issue during the coverage period, the CRTC’s 2024–25 Departmental Plan, released in March 2024, states that the CRTC will “continue to advance rules to authorize Canadian carriers to block botnets and other cyber-related threats at the network level, including spam and ransomware attacks.”⁷⁵

- Is there blocking of tools that enable individuals to bypass censorship, such as virtual private networks (VPNs)?
- Does the state procure, or compel services providers to procure, advanced technology to automate censorship or increase its scope?

	2022	2023	2024
B2: Do state or nonstate actors employ legal, administrative, or other means to force publishers, digital platforms, content hosts, or other intermediaries to delete content, particularly material that is protected by international human rights standards? (0–4 points)	3	3	3

B2 sub-questions:

- Are administrative, judicial, or extralegal measures used to order the deletion of content from the internet, particularly journalism, discussion of human rights, educational materials, or political, social, cultural, religious, and artistic expression, either prior to or after its publication?

⁶⁴ Rogers Media Inc. v. John Doe 1, 2022 FC 775, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/521629/index.do>.

⁶⁵ See e.g. Osler, “Canadian Federal Court issues dynamic website-blocking injunction to combat unauthorized hockey webcasts,” June 9, 2022, <https://www.osler.com/en/resources/regulations/2022/canadian-federal-court-issues-dynamic-website-blocking-injunction-to-combat-unauthorized-hockey-web>.

⁶⁶ Rogers Media Inc. v. John Doe 1, Docket T-955-21 order dated November 21, 2022, available in PDF at https://www.bellmedia.ca/lede/wp-content/uploads/2023/03/T-955-21_Public_Order_21-NOV-2022.pdf.

⁶⁷ Bell Media Inc. v. John Doe 1, 2022 FC 1432, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522339/index.do>.

⁶⁸ Rogers Media Inc. et al. v. John Doe 1 et al., docket T-1253-23, July 18, 2023 decision, PDF available at <https://torrentfreak.com/images/MLB-Blocking-Order.pdf>; Ernesto Van der Sar, “Federal Court Orders Canadian ISPs to Block Pirated MLB Live Streams,” Torrent Freak, July 24, 2023, <https://torrentfreak.com/federal-court-orders-canadian-isps-to-block-pirated-mlb-live-streams-230724/>.

⁶⁹ “CRTC launches consultation to strengthen Canadians’ online safety,” CRTC News Release, January 13, 2021, <https://www.canada.ca/en/radio-television-telecommunications/news/2021/01/crtc-launches-consultation-to-strengthen-canadians-online-safety.html>.

⁷⁰ See e.g. Michael Geist, “Blocking is Back: Why Internet Blocking is the Next Big Canadian Policy Battle,” March 17, 2021, <https://www.michaelgeist.ca/2021/03/blocking-is-back/>. See also Dave Naylor, “Feds blasted for plans to block entire websites for safety reasons,” March 25, 2021, Western Standard Online, <https://westernstandardonline.com/2021/03/feds-blasted-for-plans-to-block-entire-websites-for-safety-reasons/>.

⁷¹ Howard Solomon, “Canada’s big carriers, ISPs turn thumbs down on proposed mandatory botnet-fighting regime,” March 17, 2021, IT World Canada, <https://www.itworldcanada.com/article/canadas-big-carriers-isps-turn-thumbs-down-on-proposed-mandatory-botnet-fighting-regime/444050>.

⁷² CRTC, “Compliance and Enforcement and Telecom Decision CRTC 2022-170 – Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians’ online safety,” June 23, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-170.htm>.

⁷³ See CRTC Network Working Group: Contributions at <https://crtc.gc.ca/cisc/eng/cisf3d0b.htm>.

⁷⁴ CRTC Interconnection Steering Committee’s Network Working Group, “Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians’ online safety” draft report, April 22, 2023, <https://crtc.gc.ca/public/cisc/nt/NTRE080.pdf>.

⁷⁵ Canadian Radio-television and Telecommunications Commission 2024–25 Departmental Plan, March 4, 2023, <https://crtc.gc.ca/eng/publications/reports/dp2024/dp2024.htm?ga=2.247804487.1996749484.1711625739-1276214006.1710764182>.

Nonstate actors, specifically large media companies, have used legal means to force digital platforms to delete content, generally for copyright infringement. However, 2018 legal amendments to the Copyright Act reduced the misuse of the law's notice-and-notice regime.

The previous notice-and-notice regime required ISPs to forward notices from copyright holders claiming infringement to the alleged copyright violator (see B3). Several US-based antipiracy firms, including Rightscorp and CEG-TEK, used the system to send notifications to subscribers that misstated Canadian copyright law, citing US awards for damages and threatening the termination of internet access. The notifications sowed fear among Canadians, and many paid the settlement fees proposed in the notices.⁷⁶ In 2018, Parliament passed amendments to the program to restrict the information that can be included in the notices, no longer allowing misstatements of Canadian law. Further, ISPs are no longer required to forward notices to subscribers if they contain an offer to settle the infringement claim, a request or demand for payment or personal information, or a URL linking to such offers or demands.⁷⁷

Media companies have continued to use the courts to shut down and penalize operators of websites and other online services that redistribute their content in violation of copyright laws, or that offer services facilitating such activities. In November 2019, a group of media companies sought and obtained an order forcing ISPs to block certain websites that hosted copyright-infringing content, which was subsequently upheld by a court of appeal in May 2021 (see B1 and B3). In February 2022, a long-running case between all of Canada's major media companies and an owner of a website that distributed software facilitating online piracy, known as TVAddons, came to an end with a C\$25 million (\$19.6 million) settlement in which the owner admitted liability, and the offending site was shut down.⁷⁸

In 2017, the SCC upheld the decision by the British Columbia Court of Appeal in *Google, Inc. v. Equustek Solutions, Inc.*,⁷⁹ ordering Google to remove URLs in its global index pointing to websites that infringed on the plaintiffs' trademark (see B3).

Defamation claims may also result in content removal, as content hosts fear potential liability as publishers of the defamatory content (see C3). Defamation claims may also prevent the posting of content, as the British Columbia Court of Appeal demonstrated in a 2018 case when it ordered a defendant not to post anything about the plaintiff and awarded damages.⁸⁰ In 2018, the SCC ruled that a case involving the publication of defamatory content on an Israeli website against a Canadian resident should be heard in Israel rather than Canada, despite the fact that damages were incurred in Canada.⁸¹ In 2021, a British Columbia court came to the opposite conclusion, specifically that a defamation case against X (then known as Twitter) could proceed in Canada.⁸² More recently, a March 2022 court decision granted a temporary injunction against TikTok user Brooke Dietrich, ordering her to stop using the platform to advocate against antiabortion group 40 Days for Life and preventing others from reposting her content (see B8 and C3).⁸³ An Ontario defamation case where significant damages were awarded (see C3) also had the judge ordering the defendant to take the necessary steps to remove the defamatory content from the internet and enjoined the defendant from posting further defamatory content.⁸⁴ In March 2023, a Quebec Court ordered Google to remove links to defamatory search results that violated the plaintiff's privacy and Google's duties under Quebec law, but for Quebec users only, (see C6).⁸⁵

- Do publishers, digital platforms, and content hosts (including intermediaries such as app stores and content delivery networks) arbitrarily remove such content due to informal or formal pressure from government officials or other powerful political actors?
- Do publishers, digital platforms, content hosts, and other intermediaries face excessive or improper legal responsibility for opinions expressed by third parties transmitted via the technology they supply (i.e., intermediary liability), incentivizing them to remove such content?

⁷⁶ Jeremy Malcolm, "Canada Must Fix Rightsholder Abuse of its Copyright Notice System," *Deeplinks Blog*, Electronic Frontier Foundation, April 23, 2015, <https://www.eff.org/deeplinks/2015/04/call-canada-fix-rightsholder-abuse-its-copyright-notice-system>.

⁷⁷ "Bill C-86, Budget Implementation Act, 2018, No. 2, amending the *Copyright Act*," December 13, 2018, <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10127729>.

⁷⁸ Andy Maxwell, "TVAddons' Adam Lackman Admits TV Show Piracy, Agrees to Pay US\$19.5m," *TorrentFreak*, February 24, 2022, <https://torrentfreak.com/tvaddons-adam-lackman-admits-tv-show-piracy-agrees-to-pay-us14-5m-220224/>.

⁷⁹ "Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, Case Number 36602," June 28, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>

⁸⁰ "Nazerali v. Mitchell, 2018 BCCA 104," March 19, 2018, <https://www.canlii.org/en/bc/bcca/doc/2018/2018bcc104/2018bcc104.html>

⁸¹ "Haaretz.com, et al. v. Mitchell Goldfarb, SCC," January 1, 2019, <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=37202>; See also: "Appeal from the decision of the Court of Appeal for Ontario, 2016 ONCA 515," June 28, 2016, <https://www.canlii.org/en/on/onca/doc/2016/2016onca515/2016onca515.html?autocompleteStr=haaretz&autocompletePos=2>.

⁸² *Giustra v. Twitter, Inc.*, 2021 BCSC 54, January 14, 2021, <https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc54/2021bcsc54.html>.

⁸³ Canadian Civil Liberties Association (Cara Zwiibel), "CCLA Intervening in Tik Tok Injunction Appeal to Protect Space for Digital Activism," January 11, 2023, <https://ccla.org/fundamental-freedoms/ccla-intervening-in-tik-tok-injunction-appeal-to-protect-space-for-digital-activism/>.

⁸⁴ *Clancy v Farid*, 2023 ONSC 2750, June 27, 2023, <https://canlii.ca/t/jxxw3>.

⁸⁵ *A.B. c. Google*, 2023 QCCS 1167, March 28, 2023, <https://www.canlii.org/en/qc/qccs/doc/2023/2023qccs1167/2023qccs1167.html>.

In Quebec, where French is recognized as the only official language, websites that are commercial in nature are legally required to be in French,⁸⁶ although they can also be in other languages. Violators may receive a warning from a government agency and are then subject to fines if they do not comply. Recent updates to the Quebec language law through Bill 96, which became law in June 2022, have imposed even more onerous obligations on the use of French online, and provide for harsher fines.⁸⁷ Some website operators may choose to take their sites down rather than pay for translation or face fines. National or international operators of websites that do business in Quebec (and would therefore be subject to the law) sometimes block Quebec residents' access to their websites rather than comply,⁸⁸ and at least one company temporarily halted e-commerce in Quebec as a result of Bill 96.⁸⁹ Government draft regulations on Bill 96 published in January 2024 reinforce the French language requirements for websites.⁹⁰

	2022	2023	2024
B3: Do restrictions on the internet and digital content lack transparency, proportionality to the stated aims, or an independent appeals process? (0–4 points)	4	4	4

Restrictions on the internet are generally fair and proportionate. However, the new Online Streaming Act, as well as other pending legislation, have raised concerns about the transparency and proportionality of internet content restrictions. The full implications of the regulations have yet to be seen in practice, and certain directives from the government may alleviate some concerns.

The Online Streaming Act, also known as Bill C-11, which became law in April 2023, amends Canada's Broadcasting Act to allow the CRTC to regulate online streaming services (which are defined as "online undertakings") on par with traditional over-the-air broadcasters. The CRTC is empowered to enforce Canadian content ("CanCon") regulations for streaming platforms by requiring them to promote content that originates in Canada and is created by Canadians, amounting to a significant expansion of the CRTC's regulatory powers (see A5).⁹¹ The law allows the CRTC to impose regulations on streaming platforms regarding the proportion of Canadian programs to be broadcast and requires those services to make investments supporting the Canadian broadcasting system.⁹²

The final law as passed did not include Senate amendments that would have explicitly shielded user-generated content from the law, raising significant concerns that the CRTC could potentially regulate such content.⁹³ However, the government has consistently rejected claims that it intends to regulate user-generated content, such as videos uploaded to YouTube, under the law.⁹⁴ In November 2023, during the coverage period, the Department of Canadian Heritage published final policy directions to the CRTC for enforcement of the Online Streaming Act.⁹⁵ Like the draft directions issued in June 2023, the final directions reiterated the concept that social media content creators will not be regulated by the law, and clarified certain other matters.⁹⁶ However, while these policy directions are binding on the CRTC, (their effects in practice remained unclear

B3 sub-questions:

- Are there national laws, independent oversight bodies, and other democratically accountable procedures in place to ensure that decisions to restrict access to certain content abide by international human rights standards and are proportional to their stated aim?
- Do specific laws or binding legal decisions require publishers, digital platforms, ISPs, content hosts, generative artificial intelligence systems, and other intermediaries to restrict access to online material, particularly that which is protected under international human rights standards?
- Are those that restrict content—including state authorities, ISPs, content hosts, digital platforms, and other intermediaries—transparent about what content is blocked, deleted, or otherwise limited, including to the public and directly to the impacted user?
- Are rules for the restriction of content clearly defined, openly available for individuals to view, and implemented in a consistent and nondiscriminatory manner?
- Do individuals whose content is subjected to censorship have access

⁸⁶ "Charter of the French Language, c. C-11, Article 52," June 1, 2020, <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-11>.

⁸⁷ *An Act respecting French, the official and common language of Québec*, SQ 2022, c 14, available at <https://www.canlii.org/en/qc/laws/astat/sq-2022-c-14/latest/sq-2022-c-14.html>. See e.g. Dentons "The main impacts of Québec's Bill 96 on companies," June 23, 2022, <https://www.dentons.com/en/insights/articles/2022/june/22/the-main-impacts-of-quebecs-bill-96-on-companies>.

⁸⁸ Elysia Bryan-Baynes, "Quebec language police target English retail websites," November 13, 2014, <https://globalnews.ca/news/1671128/oqlf-targets-english-retail-websites/>.

⁸⁹ See e.g. Simon Nakonechny, "American company says it will stop shipping products to Quebec over new language law," CBC News, September 21, 2022, <https://www.cbc.ca/news/canada/montreal/otterbox-bill-96-1.6590501>.

⁹⁰ See e.g. McCarthy Tétrault, *Long-Awaited Regulation Clarifies Bill 96...or Does It? – Part 2: Public Signage and Commercial Advertising*, January 15, 2024, <https://www.mccarthy.ca/en/insights/blogs/consumer-markets-perspectives/long-awaited-regulation-clarifies-bill-96-or-does-it-part-2-public-signage-and-commercial-advertising>.

⁹¹ Josh Large, "Canada's Bill C-11 Passed into Law: What You Need to Know," IP Vanish, May 4, 2023, <https://www.ipvanish.com/blog/bill-c-11-canada/>.

⁹² Bill C-11, "Online Streaming Act," Parliament of Canada, April 27, 2023, <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/royal-assent>.

⁹³ See e.g. Michael Geist, "The Bill C-11 Compromise That Never Came," April 27, 2023, <https://www.michaelgeist.ca/2023/04/billc11end/>.

⁹⁴ CRTC, "Myths and Facts about Bill C-11, the *Online Streaming Act*," May 12, 2023, <https://crtc.gc.ca/eng/industr/modern/myth.htm>.

⁹⁵ Minister of Canadian Heritage in the Canada Gazette, Part II, Volume 157, Number 24, *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework): SOR/2023-239*, November 9, 2023, <https://canadagazette.gc.ca/rp-pr/p2/2023/2023-11-22/html/sor-dors239-eng.html>.

⁹⁶ Mickey Djuric, "Social media creators, podcasts won't be regulated under Liberals' online streaming law," CBC News, November 14, 2023, <https://www.cbc.ca/news/politics/podcasters-wont-be-regulated-1.7027836>.

during the coverage period as they require the CRTC to create regulations and official regulatory policies to put them into effect. The Online Streaming Act is not expected to be implemented for several years.⁹⁷

After years of signalling that it would consider legislation to regulate harmful online content, the Canadian government introduced the Online Harms Act as part of Bill C-63 in February 2024.⁹⁸ The Online Harms Act targets seven types of harmful online content, including content that sexually victimizes children or revictimizes a survivor, content that foments hatred, and content that incites violence. Online platforms regulated under the proposed law, including social media services, will have three duties: to act responsibly, to protect children, and to make certain content inaccessible, as well as a duty to keep records that ensure compliance.⁹⁹ The proposal establishes significant administrative monetary penalties for non-compliance of social media services, up to the greater of 6% of gross global revenue or C\$10 million (\$XX million); and penal provisions in certain cases including fines of the greater of 8% of gross global revenue or C\$25 million (\$XX million). The Online Harms Act creates three new regulatory bodies: the Digital Safety Commission of Canada, the Digital Safety Ombudsperson of Canada, and the Digital Safety Office of Canada.¹⁰⁰ Bill C-63 would also modify the Criminal Code to include provisions related to offenses motivated by hatred (see C2). Bill C-63 is still in the early stages of the legislative process and the long-term effects of the Online Harms Act portion of the bill remain unclear.

Canada's largest ISPs participate in Project Cleanfeed Canada, an initiative that allows ISPs to block access to child sexual abuse images that are hosted outside the country (as opposed to content hosted within Canada, which is subject to removal).¹⁰¹ Accessing child sexual abuse imagery is illegal in Canada under section 163.1(4.1) of the Criminal Code,¹⁰² as well as under international human rights standards. Part 4 of Bill C-63 would amend the existing *Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons who Provide an Internet Service* to broaden its scope and application to internet access providers, internet content hosts, and services that facilitate "interpersonal communication" using the internet.

Bill S-210, *An Act to restrict young persons' online access to sexually explicit material*, initially introduced in November 2021, is advancing rapidly through the legislative process and could become law soon, though the chances that Senate-introduced bills become law are traditionally slim.¹⁰³ It contains provisions requiring age verification methods for adult content on the internet, fines for non-compliance, and empowers a regulatory agency to apply to the Federal Court to order Canadian ISPs to block non-compliant websites. Analysts have raised concerns that the overbroad drafting of the bill could lead to the blocking of sites that do not contain exclusively adult content or create restrictions on lawful content for adults.¹⁰⁴ The Bill failed to become law prior to Parliament adjourning for the summer in 2024 (just after the coverage period).

Bill 74, Quebec's controversial law requiring ISPs to block access to gambling sites, came into effect in 2016,¹⁰⁵ but remains inoperative as a Quebec court declared the law unconstitutional in

to efficient and timely avenues of appeal with the actor responsible for restricting that content?

- Are oversight bodies, such as those governed by the state or industry-created mechanisms, effective at ensuring content protected under international human rights standards is not removed?

⁹⁷ Mickey Djuric, "Social media creators, podcasts won't be regulated under Liberals' online streaming law," CBC News, November 14, 2023, <https://www.cbc.ca/news/politics/podcasters-wont-be-regulated-1.7027836>.

⁹⁸ Bill C-63, *An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*, introduced February 26, 2024. Legislation and information available at <https://www.parl.ca/LegisInfo/en/bill/44-1/c-63>.

⁹⁹ House of Commons of Canada, Bill C-63, *An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*, <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-63/first-reading>.

¹⁰⁰ See e.g. Fahad Siddiqui, "Bill C-63: The Online Harms Act," Norton Rose Fulbright, March 12, 2024, <https://www.nortonrosefulbright.com/en/knowledge/publications/307d02f8/bill-c-63-the-online-harms-act>.

¹⁰¹ Cybertip!ca, "Cleanfeed Canada," <https://www.cybertip.ca/en/about/ccaice/>.

¹⁰² Criminal Code, RSC 1985 c C-46 s 163.1(4.1).

¹⁰³ See Bill S-210 legislative information at <https://www.parl.ca/legisinfo/en/bill/44-1/s-210>.

¹⁰⁴ Michael Geist, "The Most Dangerous Canadian Internet Bill You've Never Heard Of Is a Step Closer to Becoming Law," December 14, 2023, <https://www.michaelgeist.ca/2023/12/the-most-dangerous-canadian-internet-bill-youve-never-heard-of-is-a-step-closer-to-becoming-law/>.

¹⁰⁵ Michael Geist, "Government-Mandated Website Blocking Comes to Canada as Quebec's Bill 74 Takes Effect," May 26, 2016, <http://www.michaelgeist.ca/2016/05/bill74takeseffect/>.

2018, ruling online gambling a federal rather than provincial matter.¹⁰⁶ In May 2021, the Quebec Court of Appeal upheld that ruling,¹⁰⁷ and in March 2022, the SCC declined to hear the matter.¹⁰⁸

In 2004, the SCC ruled that ISPs are not liable for copyright infringement violations committed by their subscribers,¹⁰⁹ a principle now enshrined in law.¹¹⁰ Copyright law includes a notice-and-notice provision, in effect since 2015, which was amended in 2018 (see B2). No content is removed from the internet without a court order. Content may be ordered blocked at the ISP level by a court (see B1), and ISPs do not disclose subscriber information without court approval, although the granting of such approvals have become more common in recent years.¹¹¹

The SCC's ruling in *Google, Inc. v. Equustek Solutions, Inc.*—wherein Google was ordered to remove URLs in its global index pointing to websites that infringed on the plaintiffs' trademark—was strictly focused on the law of intellectual property and interlocutory injunctions. Whether such worldwide orders may be granted in other areas of the law in the future, or whether they will have effect in foreign jurisdictions, is unclear,¹¹² though there has been little evidence this is occurring. In fact, a Quebec court recently issued an injunction against Google to block websites in a defamation case that was limited to Google users in Quebec (see AB v. Google in C6).

Although platforms are legally protected from liability for copyright infringement by their users, they may face liability for alleged defamation once they have been alerted to the publication of the ostensibly defamatory content.¹¹³ A court may also order the removal of such content. The SCC has held that merely linking to defamatory content on the internet is not defamation in and of itself; it would only be defamation if a site actually repeats the defamatory material. URLs in such cases would not be removed.¹¹⁴

	2022	2023	2024
B4: Do journalists, commentators, and ordinary people practice self-censorship online? (0–4 points)	3	4	4

Online self-censorship is not widespread. Certain individuals may self-censor for fear of potential government surveillance under Bill C-51, the Anti-Terrorism Act, which was reformed in 2019 (see C5). However, there was no indication that this had a chilling effect on online speech during the two most recent coverage periods. Some individuals reported that they have incurred negative consequences from employers and institutions (who are not covered by Section 2 of the Charter) for posting pro-Palestinian views on the internet during the Israel-Hamas war.¹¹⁵ Anecdotal, many individuals on both sides (including this report's author) have self-censored their opinions online regarding the Israel-Hamas war for fear of potential negative consequences, but it is unclear how widespread this is.

B4 sub-questions:

- Do internet users in the country engage in self-censorship on important political, social, or religious issues, including on public forums and in private communications?
- Does fear of retribution, censorship, state surveillance, or data collection practices have a chilling effect on online speech or cause individuals to avoid certain online activities of a civic nature?
- Where widespread self-censorship online exists, do some journalists, commentators, or ordinary individuals continue to test the

¹⁰⁶ "Canadian Wireless Telecommunications Association c. Attorney General of Quebec, 2018 QCCS 3159 (CANLII) [*Association canadienne des télécommunications sans fil c. Procureure générale du Québec* 2018 QCCS 3159 (CanLII)]," <https://www.canlii.org/fr/qc/qccs/doc/2018/2018qccs3159/2018qccs3159.html?searchUrlHash=AAAAAQATcHJvamVOIGRIIGxhIGxvaSA3NAAAAAAB&resultIndex=26>.

¹⁰⁷ Procureur général du Québec c. Association canadienne des télécommunications sans fil, 2021 QCCA 730, 2021 QCCA 730, <https://www.canlii.org/fr/qc/qcca/doc/2021/2021qcca730/2021qcca730.html>.

¹⁰⁸ SCC case file # 39774, <https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/19249/index.do>.

¹⁰⁹ Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn of Internet Providers, [2004] SCC, 2 SCR 427.

¹¹⁰ Copyright Act, R.S.C., 1985, c. C-42, section 31.1, July 1, 2020, <https://laws-lois.justice.gc.ca/eng/acts/c-42/FullText.html>.

¹¹¹ *Voltage Pictures, LLC v. John Doe*, 2016 FC 881, CanLII, <https://www.canlii.org/en/ca/fct/doc/2016/2016fc881/2016fc881.html>, where the Federal Court ordered an ISP to divulge subscriber information of a representative defendant in a so-called "reverse class action" copyright infringement lawsuit.

¹¹² For example, a US court has questioned whether Canadian courts have jurisdiction to make such an order, and has already granted a preliminary injunction against the implementation of the Equustek decision in the United States based on the long-standing principle of Google as an intermediary. See, *Google Inc. v. Equustek Solutions Inc.*, United States District Court, N.D. California, San Jose Division, Docket No. 5:17-cv-04207-EJD, November 2, 2017, <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?referer=https://www.google.ca/&httpsredir=1&article=2589&context=historical>; *Equustek Solutions Inc. v Jack*, 2018 BCSC 610, April 16, 2018, <https://www.canlii.org/en/bc/bcsc/doc/2018/2018bcsc610/2018bcsc610.html>; *Equustek Solutions Inc. v Jack*, 2020 BCSC 793, May 29, 2020, <https://www.canlii.org/en/bc/bcsc/doc/2020/2020bcsc793/2020bcsc793.html>.

¹¹³ See e.g. *Canoe Inc. c. Corriveau*, 2012 QCCA 109, Baglow v. Smith, 2015 ONSC 1175.

¹¹⁴ "Crookes v. Newton, 2011 SCC 47," October 19, 2011, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do>.

¹¹⁵ *Brishti Basu*, "Chilling effect: People expressing pro-Palestinian views censored, suspended from work and school," CBC News, December 22, 2023, <https://www.cbc.ca/news/canada/chilling-effect-pro-palestinian-1.7064510>.

boundaries, despite the potential repercussions?

	2022	2023	2024
B5: Are online sources of information controlled or manipulated by the government or other powerful actors to advance a favored interest? (0–4 points)	4	4	4

Online sources of information are not widely controlled or manipulated by the government or other powerful actors.

The government advanced legislation to combat disinformation and foreign interference in advance of the October 2019 federal election. The Election Modernization Act, which went into effect in June of that year, provides for a number of reforms, such as regulations on third-party online advertising and restrictions on how much campaigns can spend before a campaign season officially commences.¹¹⁶ In March 2021, certain provisions of the Election Modernization Act prohibiting misinformation about political candidates' past criminal offenses and their place of birth were struck down by an Ontario Court as unconstitutional, because they violated the right to freedom of speech.¹¹⁷ In March 2022, a report by the Canadian Election Misinformation Project found that while there was a significant amount of false information spread on social media during the 2021 electoral period, the overall effects of mis- and disinformation were minimal.¹¹⁸

In recent years, the Canadian government has advanced several proposals and taken some action to target disinformation online, especially related to COVID-19 and the 2022 full-scale Russian military invasion of Ukraine, notably through its Digital Citizen Initiative, described as "a multi-component strategy that aims to support democracy and social inclusion in Canada by building citizen resilience against online disinformation."¹¹⁹

	2022	2023	2024
B6: Are there economic, regulatory, or other constraints that negatively affect individuals' ability to publish content online? (0–3 points)	3	3	3

While there have typically been few economic or regulatory constraints on users' ability to publish legal content online, the passage of the Online News Act in June 2023 has raised the prospects of greater consequences on this ability.

In April 2022, the government introduced Bill C-18, the Online News Act,¹²⁰ which requires digital news intermediaries, including Google and Meta, to negotiate agreements that compensate

B5 sub-questions:

- Do political leaders, government agencies, political parties, or other powerful actors directly manipulate information or disseminate false or misleading information via state-owned news outlets, official social media accounts/groups, or other formal channels?
- Do government officials or other actors surreptitiously employ or encourage individuals, companies, or automated systems to generate or artificially amplify favored narratives or smear campaigns on social media?
- Do government officials or other powerful actors pressure or coerce online news outlets, journalists, or other online commentators to follow a particular editorial direction in their reporting and commentary?
- Do authorities issue official guidelines or directives on coverage to online media outlets, including instructions to downplay or amplify certain comments or topics?
- Do government officials or other actors bribe or use close economic ties with online journalists, commentators, or website owners in order to influence the content they produce or host?
- Does disinformation, coordinated by foreign or domestic actors for political purposes, have a significant impact on public debate?

B6 sub-questions:

- Are favorable informal connections with government officials or other powerful actors necessary for online media outlets, content hosts, or digital platforms (e.g., search engines, email applications, blog-hosting platforms) to be economically viable?
- Does the state limit the ability of online media or other content hosts to accept advertising or investment,

¹¹⁶ Elise von Scheel, "New rules for pre-election spending kick in Sunday," CBC News, June 29, 2019, <https://www.cbc.ca/news/politics/c76-election-pre-writ-rules-the-house-1.5193828>; See also: "Elections Modernization Act," December 13, 2018, https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_31/page-1.html.

¹¹⁷ Elizabeth Thomson, "Law prohibiting election misinformation struck down," CBC News, March 14, 2021, <https://www.cbc.ca/news/politics/elections-misinformation-court-free-speech-1.5948463>. See Canadian Constitution Foundation v. Canada (Attorney General), 2021 ONSC 1224, February 19, 2021, <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc1224/2021onsc1224.html>.

¹¹⁸ Canadian Election Misinformation Project, "Mis- and Disinformation During the 2021 Canadian Federal Election," March 31, 2022, <https://www.mediatechdemocracy.com/all-work/mis-and-disinformation-during-the-2021-canadian-federal-election>.

¹¹⁹ Canada, "Digital Citizen Initiative – Online disinformation and other online harms and threats," March 20, 2023, <https://www.canada.ca/en/canadian-heritage/services/online-disinformation.html>.

¹²⁰ Bill C-18, *An Act respecting online communications platforms that make news content available to persons in Canada*, April 5, 2022, <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-18/first-reading>.

Canadian media companies for providing news content on the intermediaries' platforms. In February 2023, open internet advocates raised concerns that Bill C-18 could facilitate restrictions on the online content available to Canadians and create economic barriers for new companies looking to enter the digital market.¹²¹

The Online News Act became law during the coverage period, on June 22, 2023.¹²² In response, Google announced on June 29 that it would remove links to Canadian news from search results in Canada once the law took effect, after regulations had been established.¹²³ Meta announced in August 2023 that it had already begun restricting access to news content on Facebook and Instagram in Canada,¹²⁴ and this blocking of news content on Facebook and Instagram continued throughout the current coverage period.¹²⁵ Google, on the other hand, negotiated a deal with the government in November 2023 that allows the company to broker a compensation structure with a single media representative, rather than individual news outlets. In light of the agreement, Google has not blocked news content in Canada. It was reported that Google will compensate Canadian news outlets up to C\$100 million (\$XX million annually as part of the deal.¹²⁶

Canada has strengthened its commitment to net neutrality as a matter of national policy, ensuring that ISPs present web content neutrally. In 2017, the CRTC enacted a pair of telecommunications policies that effectively prohibited differential pricing for some data services offered by ISPs and the zero-rating of certain media services, barring ISPs from offering such preferred media free of charge.¹²⁷ With these policies, the CRTC has substantively completed a national framework that ensures the continuation of net neutrality.

The Department of Canadian Heritage, in the wake of its own report, announced a deal with Netflix in 2017, in which the streaming service pledged to spend a minimum of C\$500 million (\$370 million) on Canadian productions over the next five years¹²⁸—a target that it had reportedly exceeded by 2019.¹²⁹ Furthermore, the Online Streaming Act will require online undertakings to contribute to funding Canadian content (see B3). After the coverage period in June 2024, the CRTC enacted the policy to have online streaming services that make C\$25 million (\$XX million) or more in annual Canadian revenues to contribute 5% of those revenues to certain media funds to support the creation of Canadian content and content related to minority groups including indigenous peoples.¹³⁰ In its January 2020 review, the legislative review panel recommended that the national Goods and Services Tax (GST) should apply to "media communications services provided by foreign online providers," reversing a previous decision to exempt Netflix from the tax.¹³¹ Measures to charge GST or Harmonized Sales Tax (HST) rates,

particularly from foreign sources, or does it discourage advertisers from conducting business with disfavored online media or other content hosts?

- Do onerous taxes, regulations, or licensing fees present an obstacle to participation in, establishment of, or management of digital platforms, news outlets, blogs, or social media groups/channels?
- Do ISPs manage network traffic and bandwidth availability in a manner that is transparent, is evenly applied, and does not discriminate against users or producers of content based on the nature or source of the content itself (i.e., do they respect "net neutrality" with regard to content)?

¹²¹ Andrew Sullivan and Natalie Campbell, "Internet Impact Brief: How Canada's Online News Act Will Harm the Internet, Restricting Innovation, Security, and Growth of the Digital Economy," February 14, 2023, <https://www.internetsociety.org/resources/doc/2023/internet-impact-brief-how-canadas-online-news-act-will-harm-the-internet-restricting-innovation-security-and-growth-of-the-digital-economy/>.

¹²² Government of Canada, Department of Canadian Heritage, "Online News Act receives Royal Assent," News Release June 22, 2023, <https://www.canada.ca/en/canadian-heritage/news/2023/06/online-news-act-receives-royal-assent.html>.

¹²³ Kent Walker, "An update on Canada's Bill C-18 and our Search and News products," Google Canada Blog, June 29, 2023, <https://blog.google/intl/en-ca/company-news/outreach-initiatives/an-update-on-canadas-bill-c-18-and-our-search-and-news-products/>.

¹²⁴ Katie Robertson, "Meta Begins Blocking News in Canada," *The New York Times*, August 2, 2023, <https://www.nytimes.com/2023/08/02/business/media/meta-news-in-canada.html>; Meta, "Changes to News Availability on Our Platforms in Canada," updated August 1, 2023, <https://about.fb.com/news/2023/06/changes-to-news-availability-on-our-platforms-in-canada/>.

¹²⁵ Observations of the author, Facebook user and Instagram user.

¹²⁶ Daniel Thibeault et al, "Federal government reaches deal with Google on Online News Act," CBC News, November 29, 2023, <https://www.cbc.ca/news/politics/google-online-news-act-1.7043330>.

¹²⁷ Telecom Regulatory Policy CRTC 2017-104, "Framework for assessing the differential pricing practices of Internet service providers," April 20, 2017, <https://crtc.gc.ca/eng/archive/2017/2017-104.htm>; See also: *Telecom Decision CRTC 2017-105*, "Complaints against Quebecor Media Inc., Videotron Ltd., and Videotron G.P. alleging undue and unreasonable preference and disadvantage regarding the Unlimited Music program," April 20, 2017, <https://crtc.gc.ca/eng/archive/2017/2017-105.htm>.

¹²⁸ Daniel Leblanc, "Netflix deal the centrepiece of cultural policy," *The Globe and Mail*, September 27, 2017, <https://beta.theglobeandmail.com/news/politics/ottawa-to-unveil-500-million-netflix-deal-as-part-of-cultural-policy-overhaul/article36414401?ref=http://www.theglobeandmail.com&>.

¹²⁹ Susan Krashinsky Robertson, "Netflix says it has exceeded spending on TV and film production in Canada in just two years," *The Globe and Mail*, September 26, 2019, <https://www.theglobeandmail.com/business/article-netflix-says-its-surpassed-its-500-million-deal-with-department-of->.

¹³⁰ CRTC, Broadcasting Regulatory Policy CRTC 2024-121, "The Path Forward – Supporting Canadian and Indigenous content through base contributions," June 4, 2024, <https://crtc.gc.ca/eng/archive/2024/2024-121.htm>.

¹³¹ Government of Canada, "Innovation, Science and Economic Development Canada: Canada's communications future: Time to act," January 2020, <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>; See also: The Canadian Press, "Netflix tax not in the cards, Finance Minister Bill Morneau says," *The Star*, December 10, 2017, <https://www.thestar.com/news/canada/2017/12/10/netflix-tax-not-in-the-cards-finance-minister-bill-morneau-says.html>.

depending on the province (a range of 5 percent to 15 percent) on digital businesses, including digital platform operators, came into effect in July 2021,¹³² after having been proposed in the government's April 2021 budget¹³³ and passed into law that June.¹³⁴

In December 2021, the federal government proposed an additional "Digital Services Tax" (DST) where online companies with annual worldwide revenues of over €750 million (\$777 million) would have to pay a 3 percent tax on their Canadian revenues, if those Canadian revenues are greater than C\$20 million (\$14.8 million).¹³⁵ The DST, if passed, would apply retroactively as of January 1, 2022. By the end of the previous coverage period, the government appeared to be moving forward with the tax, despite complaints from US tech industry groups and opposition from US trade officials.¹³⁶ In November 2023, the government announced legislation that would implement the DST, citing ongoing delays related to Organization for Economic Co-operation and Development (OECD) treaty negotiations.¹³⁷ The Federal budget released in April 2024 reiterated Canada's intention to put the DST into effect, pending the adoption of the legislation in Parliament in 2024.¹³⁸

Numerous provinces, including British Columbia, Quebec, and Saskatchewan, had already been levying provincial sales taxes for several years on out-of-province digital platforms, including Netflix, Google, Amazon, and, in Quebec's case, Spotify.¹³⁹ In December 2021, the Manitoba provincial government also added a sales tax,¹⁴⁰ and in July 2022, the British Columbia government began to apply sales taxes to online marketplaces such as eBay.¹⁴¹

	2022	2023	2024
B7: Does the online information landscape lack diversity and reliability? (0–4 points)	4	4	34

Score Change: The score decreased from 4 to 3 because blocking of news by Meta on Facebook and Instagram as a result of the passage of the Online News Act has led to diminished diversity and reliability of online information.

The online environment in Canada is relatively diverse, and internet users have access to a wide range of news and opinions on a variety of topics, though Meta's blocking of news content as a result of the Online News Act (see B6 and further below in this section) has had a significant impact on access. All major media organizations operate websites that feature articles and audio and video content. The public broadcaster maintains a comprehensive website that includes news articles and streamed video programming. Paywalls are increasingly used by newspapers publishing online, but many high-quality, independent news and commentary sites remain accessible for free. While some sites are partisan in nature, a wide array of political viewpoints are available online. Additionally, there are online media dedicated to the perspectives of Canada's First Nations peoples¹⁴² and LGBT+ Canadians.¹⁴³

B7 sub-questions:

- Are people able to access a range of local, regional, and international news sources that convey independent, balanced views in the main languages spoken in the country?
- Do online media outlets, social media pages, blogs, and websites represent diverse interests, experiences, and languages within society, for example by providing content produced by different ethnic, religious, gender, LGBT+, migrant, diaspora, and other relevant groups?
- Does a lack of competition among digital platforms, content hosts, and other intermediaries undermine the

¹³² Government of Canada, "GST/HST for digital economy businesses: Overview," last modified July 29, 2021, <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/digital-economy.html>.

¹³³ Government of Canada 2021 Budget ("A Recovery Plan for Jobs, Growth, and Resilience") Annex 6, "Application of the GST/HST to E-commerce" subsection, April 21, 2021, <https://www.budget.gc.ca/2021/report-rapport/annx6-en.html#application-of-the-gst-hst-to-e-commerce>.

¹³⁴ Bill C-30, "An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures," <https://www.parl.ca/LegisInfo/en/bill/43-2/C-30>.

¹³⁵ Deputy Prime Minister and Minister of Finance, "Notice of Ways and Means Motion to introduce an Act to implement a Digital Services Tax," December 2021, <https://fin.canada.ca/drleg-apl/2021/bia-leb-1221-1-eng.html>.

¹³⁶ See e.g. Michael Geist, "The Biden Visit to Canada: Why Digital Policy is Emerging as a Serious Trade Tension," March 22, 2023, <https://www.michaelgeist.ca/2023/03/the-biden-visit-to-canada-why-digital-policy-is-emerging-as-a-serious-trade-tension/>; United States Trade Representative, "USTR Opposes Canada's Digital Services Tax Act Proposal," February 22, 2022, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/february/ustr-opposes-canadas-digital-services-tax-act-proposal>.

¹³⁷ Peter Zimonjic, "Liberals announce legislation to set stage for digital services tax," CBC News, November 28, 2023, <https://www.cbc.ca/news/politics/digitas-services-tax-coming-competition-1.7042662>.

¹³⁸ Government of Canada, "Budget 2024 Fairness for Every Generation," Chapter 8, section 8.1 ("Tax Fairness"), <https://budget.canada.ca/2024/report-rapport/chap8-en.html#s8-1>.

¹³⁹ "What the new 'Netflix tax' means for B.C. users," CBC News, February 19, 2020, <https://www.cbc.ca/news/canada/british-columbia/new-tax-on-streaming-services-1.5468709>.

¹⁴⁰ Roger Smith et al, "Manitoba's retail sales tax rules expand to online sales and streaming platforms," *Osler*, December 13, 2021, <https://www.osler.com/en/resources/regulations/2021/manitoba-s-retail-sales-tax-rules-expand-to-online-sales-and-streaming-platforms>.

¹⁴¹ See e.g. Gordon Hoekstra, "New B.C. sales tax rules go into effect July 1 for online marketplaces like Amazon, eBay," *Vancouver Sun*, June 26, 2022, <https://vancouversun.com/business/local-business/new-bc-sales-tax-rules-go-into-effect-canada-day-for-online-marketplaces>.

¹⁴² See e.g. APTN News, <https://www.aptnnews.ca/>.

¹⁴³ See e.g. The ArQuives, <https://arquives.ca/>.

Misinformation surrounding the COVID-19 virus was a significant issue in Canada throughout the pandemic,¹⁴⁴ and Russian disinformation about the war in Ukraine has reportedly undermined Canadians' ability to obtain accurate information about the war.¹⁴⁵

There is a wide range of content available in both official federal languages (English and French), as well as many other languages.

The Online News Act, which became law in June 2023 has imposed restrictions on the news content available to Canadians on certain online platforms, specifically Facebook and Instagram, with no end in sight (see B6). Such restrictions, should they persist, have the potential to significantly undermine the diversity of the online information landscape even further in the future. Studies have shown that already the quality of news and political information has suffered from Meta's blocking of news links.¹⁴⁶

	2022	2023	2024
B8: Do conditions impede individuals' ability to form communities, mobilize, and campaign online, particularly on political and social issues? (0–6 points)	6	6	6

Digital mobilization tools, including social media platforms and communication apps, are available and are used to build support for political and social movements. Much online activism that targets the information and communications technology (ICT) sector is spearheaded by a popular nonpartisan, nonprofit organization called Open Media, which advocates for three pillars of internet rights—free expression, access, and privacy.¹⁴⁷

Canadians were especially active in the online #MeToo movement,¹⁴⁸ which prompted the justice minister to consider updating laws to ensure victims of sexual violence are treated more compassionately in courtrooms.¹⁴⁹ This online activism also influenced the government to introduce Bill C-65,¹⁵⁰ which became law in 2018 and dramatically updated the legal framework for harassment as it applies to the federal government and federally regulated workplaces.¹⁵¹ Online activism likely played a role in the decision to legalize cannabis countrywide,¹⁵² which also went into effect in 2018. As the COVID-19 pandemic progressed, Canadians used the internet to help organize in-person protests once again, around issues ranging from Black Lives Matter¹⁵³ to protests against mask mandates and other pandemic-related public health measures.¹⁵⁴ The so-called "Trucker Convoy" of early 2022 in Ottawa was fueled by online activity, including crowdfunding efforts to financially support attendees.¹⁵⁵

diversity of information to which people have access?

- Does the presence of misinformation undermine users' ability to access independent, credible, and diverse sources of information?
- Does false or misleading content online significantly contribute to offline harms, such as harassment, property destruction, physical violence, or death?
- If there is extensive censorship, do users employ VPNs and other circumvention tools to access a broader array of information sources?

B8 sub-questions:

- Can people freely participate in civic life online and join online communities based around their political, social, or cultural identities, including without fear of retribution or harm?
- Do civil society organizations, activists, and communities organize online on political, social, cultural, and economic issues, including during electoral campaigns and nonviolent protests, including without fear of retribution or harm?
- Do state or other actors limit access to online tools and websites (e.g., social media platforms, messaging groups, petition websites) for the purpose of restricting free assembly and association online?
- Does the state use legal or other means (e.g. criminal provisions, detentions, surveillance) to restrict free assembly and association online?

¹⁴⁴ Karine Garneau and Clémence Zossou, "Misinformation during the COVID-19 pandemic," Statistics Canada, February 2, 2021, <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00003-eng.htm>.

¹⁴⁵ David Akin, "Russian disinformation fogs up view of Ukraine war for many Canadians," Global News, February 24, 2023, <https://globalnews.ca/news/9510264/russian-disinformation-view-ukraine-war-canadians/>.

¹⁴⁶ Thomson Reuters, "Meta's news ban changed how people share political info — for the worse, studies show," CBC News, April 15, 2024, <https://www.cbc.ca/news/business/meta-block-news-1.7174031>.

¹⁴⁷ Open Media, <https://openmedia.org/>.

¹⁴⁸ Adina Bresge, "#Metoo movement prompting sexual-assault survivors to break silence to family," *National Post*, January 31, 2018, <https://nationalpost.com/pm-news-pmn/canada-news-pmn/metoo-movement-prompting-sexual-assault-survivors-to-break-silence-to-family>.

¹⁴⁹ Kate Taylor, "Where to go after #MeToo," *The Globe and Mail*, December 6, 2017, <https://tgam.ca/2GNPCW1>.

¹⁵⁰ "An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1," 42nd Parliament, September 11, 2019, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=9220285&Language=E>.

¹⁵¹ Parliament of Canada, "Statutes of Canada, Chapter 22," October 25, 2018, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-65/royal-assent>.

¹⁵² Ian Brown, "The new activism isn't about laws': Stigma lingers despite end of cannabis prohibition," *The Globe and Mail*, October 17, 2018, <https://www.theglobeandmail.com/cannabis/article-the-stigma-that-survives-will-determine-whether-cannabis-becomes-an/>.

¹⁵³ "Canadians hold protests, vigils for black lives lost at the hands of police," CBC News, June 5, 2020, <https://www.cbc.ca/news/canada/canadian-floyd-anti-racism-rallies-1.5599792>.

¹⁵⁴ Adam Kovac, "10 arrested, over 140 tickets given as thousands protest in Montreal against pandemic public health measures," CTV News, March 13, 2021, <https://montreal.ctvnews.ca/10-arrested-over-140-tickets-given-as-thousands-protest-in-montreal-against-pandemic-public-health-measures-1.5346328>.

¹⁵⁵ Stephanie Carvin, "How the Freedom Convoy was fuelled by online activism," *National Post*, March 5, 2022, <https://nationalpost.com/opinion/stephanie-carvin-how-the-freedom-convoy-was-fuelled-by-online-activism>.

In March 2022, the Ontario Superior Court of Justice granted a temporary injunction against TikTok user Brooke Dietrich, ordering her to stop all activist activities on the platform against the antiabortion group 40 Days for Life; the case remains ongoing (see C3).¹⁵⁶

C. Violations of User Rights (0-40 points)

	2022	2023	2024
C1: Do the constitution or other laws fail to protect rights such as freedom of expression, access to information, and press freedom, including on the internet, and are they enforced by a judiciary that lacks independence? (0–6 points)	5	5	5

The constitution includes strong protections for freedom of speech and freedom of the press. Freedom of speech is protected as a “fundamental freedom” by Section 2 of the Canadian Charter of Rights and Freedoms. Under the Charter, one’s freedom of expression is “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”¹⁵⁷ These protections apply to all forms of speech, whether online or offline. There are a few restrictions that apply to online speech (see C2).

	2022	2023	2024
C2: Are there laws that assign criminal penalties or civil liability for online activities, particularly those that are protected under international human rights standards? (0–4 points)	2	2	2

Users can face significant criminal penalties for some forms of online expression, as well as civil liability for defamation emanating from common law principles. Some provincial defamation laws and the general civil liability regime in Quebec also limit freedom of expression online.

Hate speech, along with advocating genocide and uttering threats and defamatory libel, are also regulated under the Criminal Code.¹⁵⁸ Punishment for defamatory libel, advocating genocide, and uttering threats may include imprisonment for up to five years. Hate speech is punishable by up to two years in prison. The proposed Bill C-63 (see B3) updates the Criminal Code to provide higher penalties (including up to life imprisonment) for *any* crimes motivated by “hatred based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression.”¹⁵⁹ Bill C-63 also allows for forced appearances, with the approval of the Attorney General, in front of a provincial court judge for

C1 sub-questions:

- Does the constitution contain language that provides for freedom of expression, access to information, and press freedom generally?
- Are there laws or binding legal decisions that specifically protect online modes of expression, access to information, and press freedom?
- Do executive, legislative, and other governmental authorities comply with these legal decisions, and are these decisions effectively enforced?
- Is the judiciary independent, and do senior judicial bodies and officials support free expression, access to information, and press freedom online?

C2 sub-questions:

- Do specific laws—including penal codes and those related to the media, defamation, cybercrime, cybersecurity, and terrorism—criminalize online expression and activities that are protected under international human rights standards (e.g., journalism, discussion of human rights, educational materials, or political, social, cultural, religious, and artistic expression)?
- Are restrictions on online activities defined by law, narrowly circumscribed, and both necessary and proportionate to address a legitimate aim?

¹⁵⁶ Canadian Civil Liberties Association (Cara Zwibel), “CCLA Intervening in Tik Tok Injunction Appeal to Protect Space for Digital Activism,” January 11, 2023, <https://ccla.org/fundamental-freedoms/ccla-intervening-in-tik-tok-injunction-appeal-to-protect-space-for-digital-activism/>.

¹⁵⁷ “Constitution Act, Canadian Charter of Rights and Freedoms,” 1982, <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

¹⁵⁸ R.S.C 1985 c. C-46, <https://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>.

¹⁵⁹ See Bill C-63 text at <https://www.parl.ca/documentviewer/en/44-1/bill/C-63/first-reading?col=2>, Part 2, section 15, creating a new section 320.1001 of the *Criminal Code*.

various sanctions if a person is *suspected* that they *may* commit a hate crime, under the title “Fear of hate propaganda offence or hate crime.”¹⁶⁰

Human rights complaints regarding potentially defamatory statements can be decided through the mechanisms provided by provincial human rights laws and the Canadian Human Rights Act (CHRA).¹⁶¹ However, the controversial provision of the CHRA prohibiting online hate speech (section 13), which was criticized for being overly broad, was repealed in 2013.¹⁶² The proposed Bill C-63 (see B3) reinserts an updated section 13, which would make it a discriminatory practice “to communicate or cause to be communicated hate speech by means of the Internet or any other means of telecommunication,”¹⁶³ and thus subject to investigation and monetary penalties. The inclusion of the Criminal Code and CHRA provisions in Bill C-63 have been widely criticized.¹⁶⁴

In January 2021, an Ontario court took the definition of defamation one step further when it recognized a common law tort of “internet harassment” to address the defendant’s online conduct and publications in *Caplan v. Atas* (see C3 and C7). In this case, the court defined “internet harassment” as “serial publications of defamatory material,” which are used to “harass, harrass, and molest” the victim.¹⁶⁵

Antispam legislation enacted in 2014 requires opt-in consent to send commercial electronic messages. Critics of the legislation have argued that it is overly broad and overregulates commercial speech. After the Federal Court of Appeal upheld the constitutionality of the law in 2020,¹⁶⁶ in March 2021, the SCC refused to hear an appeal, effectively ending any constitutional challenge.¹⁶⁷

In October 2023 a Parliamentary Committee released a report proposing that large tech companies be held accountable for misinformation they help spread,¹⁶⁸ but there has been no advancement on this issue.

	2022	2023	2024
C3: Are individuals penalized for online activities, particularly those protected under international human rights standards? (0–6 points)	6	6	6

Individuals were not arrested or prosecuted for online activities that are protected under international human rights standards during the coverage period, though courts have recently increased awards in online defamation cases.

Generally, writers, commentators, and bloggers are not subject to legal sanction for content that they post on the internet. Internet users are free to discuss any political or social issues without risk of prosecution, unless the discourse violates the hate speech provisions in the Criminal Code, or rises to the level of harassment, which is both a criminal offense¹⁶⁹ and now an actionable civil tort in Canada (see C2 and C7).

C3 sub-questions:

- Are writers, commentators, journalists, bloggers, or social media users subject to civil liability, imprisonment, arbitrary detention, police raids, or other legal sanction for publishing, sharing, or accessing material on the internet in contravention of international human rights standards?
- Are penalties for defamation; spreading false information or “fake news”; cybersecurity, national security, terrorism, and extremism; blasphemy; insulting state institutions and officials; or harming

¹⁶⁰ See Bill C-63 text at <https://www.parl.ca/documentviewer/en/44-1/bill/C-63/first-reading?col=2>, Part 2, section 17, creating a new section 810.012 of the *Criminal Code*.

¹⁶¹ R.S.C., 1985, c. H-6, <https://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html>.

¹⁶² Parliament of Canada, “Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom), S.C. 2013, c. 37,” September 13, 2013, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=5124394&Language=E&Mode=1>.

¹⁶³ See Bill C-63 text at <https://www.parl.ca/documentviewer/en/44-1/bill/C-63/first-reading?col=2>, Part 3, section 34, creating a new section 13 of the *Canadian Human Rights Act*.

¹⁶⁴ See e.g. Michael Geist, “Why the Criminal Code and Human Rights Act Provisions Should Be Removed from the Online Harms Act,” February 28, 2024, <https://www.michaelgeist.ca/2024/02/why-the-criminal-code-and-human-rights-act-provisions-should-be-removed-from-the-online-harms-act/>.

¹⁶⁵ *Caplan v. Atas*, 2021 ONSC 670, January 28, 2021, <https://www.canlii.org/en/on/onpsc/doc/2021/2021onsc670/2021onsc670.html>.

¹⁶⁶ 3510395 Canada Inc. v. Canada (Attorney General), 2020 FCA 103, June 5, 2020, <https://www.canlii.org/en/ca/fca/doc/2020/2020fca103/2020fca103.html>.

¹⁶⁷ Barry Sookman, “Supreme Court denies Compufinder leave to appeal in CASL Charter and constitutional challenge,” March 4, 2021, <https://www.barrysookman.com/2021/03/04/supreme-court-denies-compufinder-leave-to-appeal-in-casl-charter-and-constitutional-challenge/>.

¹⁶⁸ Mickey Djuric (Canadian Press), “MPs want big tech held responsible for misinformation spread online by foreign actors,” CP24 News, October 24, 2023, <https://www.cp24.com/news/mps-want-big-tech-held-responsible-for-misinformation-spread-online-by-foreign-actors-1.6615062>.

¹⁶⁹ Criminal Code, R.S.C., 1985, c. C-46, section 264, <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>.

Canadian courts take a proactive approach when hearing online defamation cases and are increasingly willing to grant large monetary awards. In January 2020, an Ontario judge issued significant awards for defamation against anonymous online defendants for only the second time in Canadian legal history.¹⁷⁰

More recently, in April 2023, an Ontario court awarded C\$75,000 (\$55,000) in damages to a labor union, determining that a former member defamed the union by claiming on Facebook that it had falsified the results of a COVID-19 vaccination survey.¹⁷¹ Also in April 2023, an Alberta court awarded C\$300,000 (\$222,000) in general damages for defamation, C\$100,000 (\$74,000) in general damages for harassment, and C\$250,000 (\$185,000) in aggravated damages to an employee of a regional health authority who had been repeatedly defamed and harassed by a former candidate for mayor of Calgary on his online talk show.¹⁷² In June 2023, an Ontario court ordered a defendant to pay 53 plaintiffs a total of approximately C\$ 4.77 million (\$X) in what is believed to be the largest internet defamation award in Canada to date.¹⁷³ The defendant was found liable for defamation after making tens of thousands of posts portraying the plaintiffs as “sexual predators, fraudsters, and criminals.” Large defamation awards have even extended beyond Canada’s borders, as in March 2024, an Alberta judge ordered a California woman to pay a popular Quebec DJ C\$1.5 million for online defamation, after the defendant continuously reposted false claims that the DJ was a sexual predator.¹⁷⁴

Canadian defamation cases are open to the defence of fair comment, notably in matters of public interest.¹⁷⁵ The fair comment defence has been successful in getting various recent defamation cases dismissed both in traditional media¹⁷⁶ and on the internet.¹⁷⁷

In September 2022, an Ontario court rejected Brooke Dietrich’s motion to dismiss a defamation case brought against her by the antiabortion group 40 Days for Life in connection with a TikTok campaign that Dietrich had used to advocate against the group (see B8).¹⁷⁸ Dietrich appealed the decision to dismiss her motion, and also challenged an injunction that prevents her from posting on TikTok (see B2).¹⁷⁹ The case remained ongoing during the coverage period.¹⁸⁰

	2022	2023	2024
C4: Does the government place restrictions on anonymous online communication or encryption? (0–4 points)	4	4	4

The government does not impose any restrictions on anonymous communication or encryption. Canadians are free to use encryption services and communicate anonymously online without any fear of civil or criminal sanction. Bill S-210 (see B3) contains provisions requiring age verification methods for adult content on the internet, but this bill has yet to become law.

In August 2019, the minister of public safety and emergency preparedness suggested that technology companies must actively combat the online exploitation of children, which he said is

foreign relations applied unnecessarily and disproportionately?

C4 sub-questions:

- Are website owners, bloggers, or users in general required to register with the government?
- Does the government require that individuals use their real names or register with the authorities when posting comments or purchasing electronic devices, such as mobile phones?
- Do specific laws or binding legal decisions require digital platforms, content hosts, or other

¹⁷⁰ “*Theralase Technologies Inc. v. Lanter*, 2020 ONSC 205,” CANLII, January 13, 2020, <https://www.canlii.org/en/on/onsc/doc/2020/2020onsc205/2020onsc205.html>.

¹⁷¹ *Seafarers’ International Union of Canada v. Mitchelitis*, 2023 ONSC 2456, April 24, 2023, <https://www.canlii.org/en/on/onsc/doc/2023/2023onsc2456/2023onsc2456.html>.

¹⁷² *Alberta Health Services v Johnston*, 2023 ABKB 209, April 12, 2023, <https://www.canlii.org/en/ab/abkb/doc/2023/2023abkb209/2023abkb209.html>.

¹⁷³ *Clancy v. Farid*, 2023 ONSC 2750, June 27, 2023, <https://www.canlii.org/en/on/onsc/doc/2023/2023onsc2750/2023onsc2750.html>.

¹⁷⁴ Brittany Ekelund, “You don’t get to hide’: Alberta court finds California woman guilty of defamation against Canadian DJ,” March 8, 2024, CTV News Edmonton, <https://edmonton.ctvnews.ca/you-don-t-get-to-hide-alberta-court-finds-california-woman-guilty-of-defamation-against-canadian-dj-1.6800322>.

¹⁷⁵ See *Grant v. Torstar Corp.*, 2009 SCC 61, December 22, 2009, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/7837/index.do>; see also *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, June 27, 2008, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5670/index.do> where the defence of fair comment and its parameters was first specified.

¹⁷⁶ See e.g. *Windrift Adventures Incorporated v. CTV-Bell Media Inc.*, 2023 ONSC 6488, November 16, 2023, <https://canlii.ca/t/k1dfw>.

¹⁷⁷ See e.g. *Hamer v. Doe*, 2023 ONSC 4837, August 24, 2023, <https://www.canlii.org/en/on/onsc/doc/2023/2023onsc4837/2023onsc4837.html>.

¹⁷⁸ CIVICUS Monitor, “Canada: Digital Rights in the Spotlight,” February 8, 2023, <https://monitor.civicus.org/explore/canada/>.

¹⁷⁹ Canadian Civil Liberties Association (Cara Zwibel), “CCLA Intervening in Tik Tok Injunction Appeal to Protect Space for Digital Activism,” January 11, 2023, <https://ccla.org/fundamental-freedoms/ccla-intervening-in-tik-tok-injunction-appeal-to-protect-space-for-digital-activism/>.

¹⁸⁰ *40 Days for Life v. Dietrich*, 2023 ONCA 379, <https://www.canlii.org/en/on/onca/doc/2023/2023onca379/2023onca379.html?resultIndex=1>.

facilitated by encrypted communications.¹⁸¹ The comments followed a July 2019 communiqué, and preceded an October 2019 communiqué, from ministers in the “Five Eyes alliance”—five countries that maintain an intelligence operations agreement, including Canada—that criticized technology companies for providing encrypted products and limiting law enforcement access to those products.¹⁸² In October 2020, the Five Eyes joined the governments of Japan and India in requesting a “backdoor” for encrypted communications services.¹⁸³ The joint statement expressed support for strong encryption while claiming that end-to-end encryption without a backdoor for law enforcement could undermine public safety.¹⁸⁴ During the trial of a Royal Canadian Mounted Police (RCMP) officer accused of leaking secrets (where he was ultimately found guilty), it was revealed in October 2023 that the other members of the Five Eyes alliance were upset that Canada had allegedly failed to prevent criminals from purchasing encrypted phones.¹⁸⁵

	2022	2023	2024
C5: Does state surveillance of internet activities infringe on individuals’ right to privacy? (0–6 points)	4	4	4

State surveillance of internet users under limited circumstances may infringe on privacy rights. In 2015, the government passed Bill C-51, the Anti-Terrorism Act, permitting information sharing across government agencies for a wide range of purposes, many of which are unrelated to terrorism. Several efforts to reform Canada’s antiterrorism laws have subsequently materialized, most recently with Bill C-59.

Bill C-59, an Act Respecting National Security Matters,¹⁸⁶ was introduced in 2017 to address some of the more problematic provisions of the Anti-Terrorism Act,¹⁸⁷ and was passed in June 2019.¹⁸⁸ The law limits the broad criminal-speech provisions originally seen in Bill C-51. Bill C-59 is also meant to enhance parliamentary oversight through the creation of a National Security and Intelligence Review Agency and an Office of the Intelligence Commissioner.¹⁸⁹ It still allows the government to engage in cyberoperations, but its powers to do so are more limited than what was provided for in Bill C-51.¹⁹⁰ Civil society groups raised concerns that Bill C-59 does not fully address surveillance issues posed by previous legislation¹⁹¹ and still grants too much power to the government, including the ability to engage in mass data collection.¹⁹² In February 2021,

intermediaries to identify or verify their customers’ real names?

- Are individuals prohibited from using encryption services to protect their communications?
- Do specific laws or binding legal decisions undermine strong encryption protocols, such as mandates for traceability or real-time monitoring, or requirements that decryption keys be turned over to the government?

C5 sub-questions:

- Does the constitution, specific laws, or binding legal decisions protect against government intrusion into private lives?
- Do state actors comply with these laws or legal decisions, and are they held accountable, including by an independent judiciary or other forms of public oversight, when they do not?
- Do state authorities engage in the blanket collection of communications metadata and/or content transmitted within the country?
- Are there legal guidelines and independent oversight on the collection, retention, and inspection of surveillance data by state security and law enforcement agencies, and if so, do those guidelines adhere to international human rights standards?

¹⁸¹ Stuart Thomson, “We’re closer to the knife’s edge: Confrontation looming on encryption ‘backdoors’ as Goodale looks for balance,” National Post, August 7, 2019, <https://nationalpost.com/news/politics/were-closer-to-the-knives-edge-confrontation-looming-on-encryption-backdoors-as-goodale-looks-for-balance>

¹⁸² “Joint meeting of Five Country Ministerial and quintet of Attorneys-General: communiqué, London 2019,” gov.uk, 2019, <https://www.gov.uk/government/publications/five-country-ministerial-communique/joint-meeting-of-five-country-ministerial-and-quintet-of-attorneys-general-communique-london-2019>; See also: “Joint Meeting of FCM and Quintet of Attorneys-General,” 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822818/Joint_Meeting_of_FCM_and_Quintet_of_Attorneys_GENERAL.pdf.

¹⁸³ “India joins Five Eyes, Japan in demanding backdoor into WhatsApp end-to-end encrypted chats,” India Today, October 12, 2020, <https://www.indiatoday.in/technology/news/story/india-joins-five-eyes-japan-in-demanding-backdoor-into-whatsapp-end-to-end-encrypted-chats-1730681-2020-10-12>.

¹⁸⁴ Canada (Department of Public Safety), “International Statement: End-To-End Encryption And Public Safety,” December 23, 2022, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2020-jnt-stmnt-ncrptn-pblc-sfty/index-en.aspx>.

¹⁸⁵ Catharine Tunney, “Canada was under ‘pressure’ from allies to stop sales of encrypted phones, Ortis trial hears,” CBC News, October 6, 2023, <https://www.cbc.ca/news/politics/cameron-ortis-five-eyes-1.6988984>.

¹⁸⁶ House of Commons of Canada, “1st session, 42nd Parl.,” June 20, 2017, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading>.

¹⁸⁷ Craig Forcese and Kent Roach, “The roses and the thorns of Canada’s new national security bill,” Maclean’s, June 20, 2017, <https://www.macleans.ca/politics/ottawa/the-roses-and-thorns-of-canadas-new-national-security-bill/>.

¹⁸⁸ Catharine Tunney, “Canada’s national security landscape will get a major overhaul this summer,” CBC News, June 23, 2019, <https://www.cbc.ca/news/politics/bill-c59-national-security-passed-1.5182948>

¹⁸⁹ Catharine Tunney, “Canada gets its first-ever intelligence commissioner,” CBC News, July 18, 2019, <https://www.cbc.ca/news/politics/intelligence-commissioner-plouffe-1.5216443>; See also: International Civil Liberties Monitoring Group, “Bill C-59: Changes to C-51,” January 2020, <https://iclmg.ca/issues/bill-c-59-the-national-security-act-of-2017/bill-c-59s-changes-to-c-51/>; See also: Preston Lim, “Canada Considers Most Far-Reaching Intell Reforms in Decades,” Just Security, May 13, 2019, <https://www.justsecurity.org/64030/canada-considers-most-far-reaching-intell-reforms-in-decades/>.

¹⁹⁰ Victoria Henry, “C-59: A Promise Not Kept,” OpenMedia, July 11, 2019, <https://openmedia.org/en/c-59-promise-not-kept>.

¹⁹¹ Canadian Civil Liberties Association, “Read CCLA’s Submissions on Bill C-59,” January 19, 2018, <https://ccla.org/read-cclas-submissions-bill-c-59/>.

¹⁹² International Civil Liberties Monitoring Group, “Bill C-59, The National Security Act, 2017, is now law. Parliamentarians have failed to protect Canadians’ rights and freedoms,” June 18, 2019, <https://iclmg.ca/c59-is-law/>; See also: Victoria Henry, “C-59: A Promise Not Kept,” OpenMedia, July 11, 2019, <https://openmedia.org/en/c-59-promise-not-kept>.

judges began hearing related cases and have set limits on the government's intelligence agency (CSIS), including its ability to spy on foreign countries.¹⁹³

The Office of the Privacy Commissioner (OPC) provides an important oversight function concerning the privacy of users' data. The privacy commissioner, Philippe Dufresne, is an officer of Parliament who reports directly to the House of Commons and the Senate. The commissioner's mandate includes overseeing compliance with the Privacy Act,¹⁹⁴ which covers the practices of federal government departments and agencies related to the handling of personal information.

A general right to privacy is not enshrined in Canadian law, though the Canadian Charter of Rights and Freedoms includes protections against unreasonable search or seizure, which are often interpreted as a right to privacy.¹⁹⁵ This was demonstrated in 2020, when the Alberta Court of Appeal determined that a law that allowed for unrestricted searches of personal electronic devices by border agents violated this protection.¹⁹⁶

In December 2021, Prime Minister Justin Trudeau announced his intention to propose legislation to strengthen privacy protections for users in the near future, provide for significant monetary penalties for noncompliance, and enable massive enforcement powers for the federal privacy authorities and a new privacy tribunal.¹⁹⁷ The government had introduced a bill to this effect in 2020, Bill C-11, but it did not advance after the August 2021 closure of the 43rd parliament.¹⁹⁸ The federal government is seeking to catch up with provincial privacy laws, notably the privacy reforms passed in September 2021 (and in effect as of September 2023¹⁹⁹) in Quebec that are similar to the General Data Protection Regulation (GDPR) of the EU.²⁰⁰

In June 2022, during the previous coverage period, the government introduced Bill C-27, the Digital Charter Implementation Act, which generally presents the same framework as Bill C-11.²⁰¹ In addition to the new privacy protections, Bill C-27 also includes the Artificial Intelligence and Data Act to introduce a regulatory framework for AI systems, which was not previously found in Bill C-11.²⁰² The House of Commons completed a second reading of Bill C-27 in April 2023, and progress toward passage remained slow during the current coverage period, with the Bill continuing to be debated in a Parliamentary committee.²⁰³

In June 2022, the national police force disclosed its use of spyware to hack a suspect's phones or laptop and collect data, including by turning on device cameras and microphones remotely. According to the RCMP, spyware is only used during serious criminal and national security investigations when less intrusive techniques are unsuccessful; its use always requires authorization from a judge. The force reported deploying spyware in 10 investigations between 2018 and 2020.²⁰⁴ In response to the disclosure, the Canadian Civil Liberties Association (CCLA)

regarding transparency, necessity, and proportionality?

- Do state authorities monitor publicly available information posted online (including on websites, blogs, social media, and other digital platforms), particularly for the purpose of deterring activities protected under international human rights standards such as independent journalism, community building and organizing, and political, social, cultural, religious, and artistic expression?
- Do authorities have the technical capacity to regularly monitor or intercept the content of private communications, such as email and other private messages, including through spyware and extraction technology?
- Do local authorities such as police departments surveil people's communications (including through International Mobile Subscriber Identity-Catchers or IMSI catcher technology), and if so, are such practices subject to rigorous guidelines and judicial oversight?
- Do state actors use artificial intelligence and other advanced technology for the purposes of online surveillance without appropriate oversight?
- Do state actors manually search people's electronic devices, including while in detention, for the purposes of ascertaining their online activities or their personal data, without appropriate oversight?
- Do government surveillance measures target or disproportionately affect dissidents, human rights defenders, journalists, or certain ethnic, religious, gender, LGBT+, migrant, diaspora, and other relevant groups?

¹⁹³ Jim Bronskill, "Judge denies CSIS request to collect foreign intelligence," CTV News, February 3, 2021, <https://www.ctvnews.ca/politics/judge-denies-csis-request-to-collect-foreign-intelligence-1.5294826>.

¹⁹⁴ "R.S.C., 1985, c. P-21," August 28, 2019, <https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>

¹⁹⁵ "Canadian Charter of Rights and Freedoms," 1982, <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

¹⁹⁶ R. v. Canfield, 2020 ABCA 383, <https://www.canlii.org/en/ab/abca/doc/2020/2020abca383/2020abca383.html>.

¹⁹⁷ Prime Minister of Canada, "Minister of Innovation, Science and Industry Mandate Letter," December 16, 2021, <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-innovation-science-and-industry-mandate-letter>.

¹⁹⁸ House of Commons of Canada, Bill C-11, An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts, First Reading November 17, 2020, <https://parl.ca/DocumentViewer/en/43-2/bill/C-11/first-reading>.

¹⁹⁹ <https://iapp.org/news/b/new-privacy-requirements-under-quebecs-law-25-now-in-force>

²⁰⁰ Alex LaCasse, "IAPP CPS 23: Forthcoming Quebec privacy regulations situate province 'between Canada and Europe'," iapp, June 27, 2023, <https://iapp.org/news/a/iapp-cps-23-forthcoming-quebec-privacy-regulations-situate-province-between-canada-and-europe/>.

²⁰¹ Government of Canada, "New laws to strengthen Canadians' privacy protection and trust in the digital economy", News Release, June 16, 2022, <https://www.canada.ca/en/innovation-science-economic-development/news/2022/06/new-laws-to-strengthen-canadians-privacy-protection-and-trust-in-the-digital-economy.html>. See legislative information and text of the Bill at <https://www.parl.ca/legisinfo/en/bill/44-1/c-27>.

²⁰² Government of Canada, "The Artificial Intelligence and Data Act (AIDA) – Companion document," March 13, 2023, <https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document>.

²⁰³ Parliament of Canada, "44th Parliament, 1st session: C-27," accessed March 2024, <https://www.parl.ca/legisinfo/en/bill/44-1/c-27>.

²⁰⁴ Maura Forrest, "Canada's national police force admits use of spyware to hack phones," Politico, June 29, 2022, <https://www.politico.com/news/2022/06/29/canada-national-police-spyware-phones-00043092>

called for a moratorium on the RCMP's use of spyware in August 2022.²⁰⁵ A report released by a parliamentary ethics committee in November 2022 recommended that the government create a list of banned spyware vendors and require government entities to submit privacy impact assessments prior to the use of "high-risk technological tools," though it stopped short of reiterating calls for a spyware moratorium.²⁰⁶ In November 2023, it was revealed that thirteen federal departments and agencies were using government-issued phones and computers that included software tools that could extract personal data without conducting privacy impact assessments.²⁰⁷ The government launched an investigation the following month.²⁰⁸

The COVID-19 pandemic provided authorities with an opportunity to erode privacy rights. The OPC's annual report released in September 2022 reiterated the emphasis of the two previous years' reports on the need for heightened privacy during the pandemic and the necessary reforms to privacy laws,²⁰⁹ as did the September 2023 report.²¹⁰ In May 2023, during the previous coverage period, the OPC published an investigation into whether the federal government's health authorities overreached when analyzing Canadians' cell phone location data during the pandemic. The investigation found that the public health authorities took adequate measures for the de-identification of personal data and implemented protections to prevent re-identification, determining that privacy complaints were unfounded and the Privacy Act had not been violated. However, the OPC also provided the public health authorities with several recommendations to strengthen privacy protections.²¹¹

	2022	2023	2024
C6: Does monitoring and collection of user data by service providers and other technology companies infringe on individuals' right to privacy? (0–6 points)	4	4	4

Both ISPs and mobile service providers may be legally required to aid the government in monitoring communications of their users.

The OPC and the Privacy Commissioner oversee compliance with the private sector privacy law,²¹² the Personal Information Protection and Electronic Documents Act (PIPEDA).²¹³ PIPEDA was modified by the Digital Privacy Act,²¹⁴ passed in 2015, which expanded the scope for companies to make voluntary warrantless disclosures of personal information under certain circumstances by allowing for such disclosures to be made to any organization, not just law enforcement. The act also established new mandatory security breach disclosure requirements, which came into force in 2018.²¹⁵ PIPEDA, however, remains relatively powerless. A privacy protection bill presented in June 2022 (see C5), which would implement a new Consumer Privacy Protection Act to replace PIPEDA, includes significant fines for non-compliance with the bill's

C6 sub-questions:

- Do specific laws or binding legal decisions enshrine the rights of individuals over personal data, including biometric information, that is generated, collected, or processed by public or private entities?
- Do regulatory bodies, such as a data protection agency, effectively protect people's privacy, including through investigating companies' mismanagement of data and enforcing relevant laws or legal decisions?
- Can the government obtain user information from companies (e.g., service providers, providers of public access, internet cafés, digital platforms, email providers, device manufacturers, data brokers)?

²⁰⁵ Canadian Civil Liberties Association, "CCLA Calls for Moratorium on RCMP Surveillance 'Tools,'" August 9, 2022, <https://ccla.org/press-release/ccla-calls-for-moratorium-on-rcmp-surveillance-tools/>.

²⁰⁶ House of Commons Standing Committee on Access to Information, Privacy and Ethics, "Device Investigative Tools Used by the Royal Canadian Mounted Police and Related Issues," November 2022, <https://www.ourcommons.ca/Content/Committee/441/ETHI/Reports/RP12078716/ethirp07/ethirp07-e.pdf>; Maura Forrest, "RCMP use of spyware warrants update to Canada's privacy laws, MPs say," Politico, November 24, 2022, <https://www.politico.com/news/2022/11/24/rcmp-spyware-canada-privacy-laws-00070820>.

²⁰⁷ Brigitte Bureau, "Tools capable of extracting personal data from phones being used by 13 federal departments, documents show," CBC News, November 29, 2023, <https://www.cbc.ca/news/canada/ottawa/federal-canada-government-department-privacy-1.7041255>.

²⁰⁸ Brigitte Bureau, "Parliamentary committee to study federal departments' use of tools to extract personal data," CBC News, December 7, 2023, <https://www.cbc.ca/news/canada/ottawa/data-extraction-federal-canada-government-committee-report-1.7051043>.

²⁰⁹ OPC, "A pivotal time for privacy," September 29, 2022, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202122/ar_202122/.

²¹⁰ OPC, "Protecting and promoting privacy in a digital world," September 19, 2023, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202223/ar_202223/.

²¹¹ OPC, "Investigation into the collection and use of de-identified mobility data in the course of the COVID-19 pandemic – Complaints under the Privacy Act," May 29, 2023, https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-federal-institutions/2022-23/pa_20230529_phac/.

²¹² Office of the Privacy Commissioner of Canada, "About the OPC," September 14, 2016, <https://web.archive.org/web/20170330201210/https://www.priv.gc.ca/en/about-the-opc/>.

²¹³ "Personal Information Protection and Electronic Documents Act (PIPEDA), S.C. 2000, c. 5," June 21, 2019, <https://laws-lois.justice.gc.ca/eng/acts/P-8.6/index.html>.

²¹⁴ "Digital Privacy Act, S.C. 2015, c. 32," June 18, 2015, https://laws-lois.justice.gc.ca/eng/annualstatutes/2015_32/page-1.html.

²¹⁵ Government of Canada, "Breach of Security Safeguards Regulations, published in the Canada Gazette SOR/2018-64, Part II," March 27, 2018, <http://www.gazette.gc.ca/rp-pr/p2/2018/2018-04-18/html/sor-dors64-eng.html>.

data protection framework, similar to penalties found in the GDPR.²¹⁶

The OPC continues to call for changes to the Privacy Act²¹⁷—notably, to require mandatory data-breach reporting by the government—which has not been significantly amended since 1983. The commission argues that the act is outdated, does not reflect current digital privacy concerns, and allows the government too much latitude to collect personal information.²¹⁸

The OPC shocked the legal community in 2018 when it released a draft position paper concluding that PIPEDA contained a European-style “right to be forgotten” provision.²¹⁹ Commentators questioned the OPC’s conclusions and reasoning.²²⁰ In 2018, the OPC submitted a reference question to the Federal Court to clarify whether indexing web pages and presenting results about a person’s name in Google’s search function fall under PIPEDA, which would support their right to be forgotten position. In July 2021, the Federal Court issued its decision and stated that indeed Google search falls under PIPEDA.²²¹ Google appealed the decision, but in September 2023, the Federal Court of Appeals upheld the lower court’s decision that Google search does indeed fall under PIPEDA’s purview.²²² The decision was not unanimous which provides Google an avenue to appeal to the SCC.

The OPC conducts investigations into major data breaches and other matters to determine whether private companies comply with PIPEDA. In the OPC’s investigation into the Cambridge Analytica scandal—wherein Cambridge Analytica improperly accessed the personal data of Facebook users—Facebook refused to take significant corrective measures or implement the OPC’s recommendations.²²³ In February 2020, the OPC filed an application with the Federal Court seeking a declaration that Facebook had violated PIPEDA and an order requiring Facebook take corrective action.²²⁴ In April 2023, the Federal Court ruled that Facebook had not violated PIPEDA,²²⁵ however, the OPC is appealing the decision,²²⁶ and the hearing on the appeal took place in February 2024.²²⁷ In another case from December 2021, the OPC found that Clearview AI had violated PIPEDA by scraping images from the internet without consent and sharing them with law enforcement. However, the OPC passed on enforcement of the relevant provisions of PIPEDA to provincial counterparts,²²⁸ demonstrating the law’s weakness. In June 2022, the OPC, in a joint investigation with several of its provincial counterparts, found that Tim Hortons (Canada’s leading coffee and donut restaurant chain) violated PIPEDA and provincial privacy laws by tracking the location of users of the Tim Hortons’ mobile app without proper consent for the purposes for which it was used.²²⁹ In January 2023, the OPC found that Home Depot had disclosed customers’ email addresses and purchase habits to Facebook without individuals’

without a legal process, including by purchasing it?

- Are these companies required to collect and retain data about their users?
- Are these companies required to store users’ data on servers located in the country, particularly data related to online activities and expression that are protected under international human rights standards (i.e., are there “data localization” requirements)?
- Do these companies monitor users and supply information about their digital activities to the government or other powerful actors (either through technical interception, data sharing, or other means)?
- Does the state attempt to impose similar requirements on these companies through less formal methods, such as codes of conduct, threats of censorship, legal liability for company employees, or other economic or political consequences?
- Are government requests for user data from these companies transparent, and do companies have a realistic avenue for appeal, for example via independent courts?

²¹⁶ Government of Canada, “Consumer Privacy Protection Act,” March 13, 2023, <https://ised-isde.canada.ca/site/innovation-better-canada/en/consumer-privacy-protection-act>.

²¹⁷ Office of the Privacy Commissioner of Canada, “Privacy Act reform,” modified May 31, 2023, https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-privacy-act/pa_r/.

²¹⁸ Alex Boutilier, “Ottawa is ‘blurring’ lines on privacy as it looks for new ways to collect data: watchdog,” *The Star*, February 21, 2018,

<https://www.thestar.com/news/canada/2018/02/21/ottawa-is-blurring-lines-on-privacy-as-it-looks-for-new-ways-to-collect-data-watchdog.html>.

²¹⁹ Office of the Privacy Commissioner of Canada, “Draft OPC Position on Online Reputation,” January 28, 2018, https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-on-online-reputation/pos_or_201801/.

²²⁰ Michael Geist, “Why the Canadian Privacy Commissioner’s Proposed Right to be Forgotten Creates More Problems Than it Solves,” January 29, 2018, <http://www.michaelgeist.ca/2018/01/privacycommishrtbf/>; See also: Allen Mendelsohn, “Surprise! Canada has had a Right To Be Forgotten all along!,” January 30, 2018, <http://allenmendelsohn.com/2018/01/surprise-canada-has-had-a-right-to-be-forgotten-all-along/>.

²²¹ Reference re Subsection 18.3(1) of the Federal Courts Act, 2021 FC 723, <https://www.canlii.org/en/ca/fct/doc/2021/2021fc723/2021fc723.html>.

²²² *Google LLC v. Canada (Privacy Commissioner)*, 2023 FCA 200, September 29, 2023, <https://decisions.fca-caf.ca/fca-caf/decisions/en/item/521265/index.do>.

²²³ OPC, “Joint investigation of Facebook, Inc. by the Privacy Commissioner of Canada and the Information and Privacy Commissioner for British Columbia - PIPEDA Report of Findings #2019-002,” April 25, 2019, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-002/>.

²²⁴ OPC, “Privacy Commissioner files Notice of Application with the Federal Court against Facebook, Inc.,” February 6, 2020, https://www.priv.gc.ca/en/opc-news/news-and-announcements/2020/an_200206/.

²²⁵ *Canada (Privacy Commissioner) v. Facebook, Inc.*, 2023 FC 533, April 13, 2023, <https://www.canlii.org/en/ca/fct/doc/2023/2023fc533/2023fc533.html>.

²²⁶ Allen Mendelsohn, “Facebook wins in privacy court (for now),” May 31, 2023, <https://allenmendelsohn.com/2023/05/facebook-wins-in-privacy-court-for-now/>; OPC, “Privacy Commissioner appeals Federal Court decision related to Facebook investigation,” May 12, 2023, https://www.priv.gc.ca/en/opc-news/news-and-announcements/2023/an_230512-2/.

²²⁷ Federal Court File # A-129-23, Privacy Commissioner of Canada v. Facebook, Inc., case history available at <https://www.fca-caf.ca/en/pages/hearings/court-file-database#wb-auto-6>.

²²⁸ OPC Announcement, “Clearview AI ordered to comply with recommendations to stop collecting, sharing images,” December 14, 2021, https://www.priv.gc.ca/en/opc-news/news-and-announcements/2021/an_211214/.

²²⁹ OPC, “Joint investigation into location tracking by the Tim Hortons App - PIPEDA Findings #2022-001,” June 1, 2022, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2022/pipeda-2022-001/>.

consent, contrary to PIPEDA.²³⁰ The OPC, in conjunction with its provincial counterparts, has launched ongoing investigations into the privacy practices of both TikTok and OpenAI's ChatGPT.²³¹

The SCC has also expanded privacy rights relating to technology and digital communications. In 2018, the court ruled that privacy rights are still protected when a computer is shared with others.²³² In 2017, the court extended the right to privacy to text messages in a pair of companion cases. First, the court held that there could be a reasonable expectation of privacy in received text messages, whereas previously, privacy protections only applied to sent messages.²³³ In the second case, the court held that the sender of text messages has a reasonable expectation of privacy, even when they are stored on the telecommunications provider's computers.²³⁴ However, the SCC has not found a reasonable expectation of privacy on the internet in more egregious circumstances, for example in exchanges of Facebook messages and emails in relation to a police sting regarding the criminal luring of minors.²³⁵ Conversely and most recently, in March 2024, the SCC found a reasonable expectation of privacy with regard to IP addresses in some cases, requiring police to obtain a warrant to get information matching an IP address to an individual when the IP address is in possession of a third party.²³⁶ The Court determined that the reasonable expectation of privacy was not absolute, but dependant on the facts of the case and the totality of the circumstances.

Numerous court decisions have made it easier for Canadians to seek legal redress against foreign internet companies for privacy violations. In a landmark 2017 decision, the SCC ruled that residents of British Columbia could bring a class action suit against Facebook for violating certain privacy rights in a British Columbia court, despite Facebook's choice-of-forum clause specifying California.²³⁷ Other courts followed up on this decision, with a Quebec court deciding that Yahoo's choice-of-forum clause was inoperative, as its terms and conditions were deemed to be a consumer contract that granted jurisdiction to Quebec.²³⁸ While Yahoo's choice-of-forum clause specified another Canadian province (Ontario) and not another country, the court's reasoning could clearly apply internationally. In a significant 2017 decision, the Federal Court found that PIPEDA has extraterritorial application, and ordered a Romanian website to remove court decisions that contained easily searchable personal information of Canadian citizens. The site was ordered to never post such information again,²³⁹ and the court ordered the website to pay damages to the plaintiff. In March 2023, a Quebec Court ordered Google to pay damages of C\$500,000 (\$X) after Google failed to de-index defamatory search results that violated the plaintiff's privacy and Google's duties under Quebec law, and ordered Google not present the search results, though only to Quebec users.²⁴⁰

	2022	2023	2024
C7: Are individuals subject to extralegal intimidation or physical violence by state authorities or any other actor in relation to their online activities? (0–5 points)	5	5	5

There were no documented cases of violence or physical harassment in retaliation for online activities during the reporting period. However, cyberbullying, cyberstalking, and general online harassment, particularly affecting young people, is on the rise.²⁴¹ A government study released in September 2023 found that one-quarter of Canadian teenagers experienced

C7 sub-questions:

- Are individuals subject to physical violence—such as murder, assault, torture, sexual violence, or enforced disappearance—in relation to their online activities, including membership in certain online communities?
- Are individuals subject to other intimidation and harassment—such

²³⁰ OPC, "Investigation into Home Depot of Canada Inc.'s compliance with PIPEDA," PIPEDA Findings 2023-01, January 26, 2023, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2023/pipeda-2023-001/>.

²³¹ See OPC's Annual Report, "Protecting and promoting privacy in a digital world," September 19, 2023, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202223/ar_202223/.

²³² "R. v. Reeves, 2018 SCC 56," December 13, 2018, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17405/index.do>.

²³³ "R. v. Marakah, 2017 SCC 59," December 8, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16896/index.do>.

²³⁴ "R. v. Jones, 2017 SCC 60," December 8, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16897/index.do>.

²³⁵ R v. Mills, 2019 SCC 22, April 18, 2019, <https://www.canlii.org/en/ca/scc/doc/2019/2019scc22/2019scc22.html>.

²³⁶ R. v. Bykovets, 2024 SCC 6, March 1, 2024, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20302/index.do>.

²³⁷ "Douez v. Facebook, Inc., 2017 SCC 33," June 23, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do>.

²³⁸ "Demers c. Yahoo! Inc., 2017 QCCS 4154," CANLII, September 19, 2017, <https://www.canlii.org/en/qc/qccs/doc/2017/2017qccs4154/2017qccs4154.html>.

²³⁹ "A.T. v. Globe24h.com, 2017 FC 114," CanLII, January 30, 2017, <https://www.canlii.org/en/ca/fct/doc/2017/2017fc114/2017fc114.html>.

²⁴⁰ A.B. c. Google, 2023 QCCS 1167, March 28, 2023, <https://www.canlii.org/en/qc/qccs/doc/2023/2023qccs1167/2023qccs1167.html>.

²⁴¹ "More than 1 million young Canadians victims of cyberbullying, cyberstalking: StatsCan," CBC News, December 19, 2016, <https://www.cbc.ca/news/technology/million-canadians-cyberbullying-cyberstalking-statcan-1.3903435>.

cybervictimization;²⁴² however, some groups reported experiencing higher rates of cybervictimization, with over 50 percent of nonbinary teenagers reporting such harms.²⁴³ The Online Harms Act (see B3) was introduced in part to address these issues.

Women, including journalists, activists, and politicians, have also reported facing online intimidation and misogynistic messages. Media reports from August 2022 noted a recent intensification in such threats against women. Women journalists, especially women journalists of color, shared anonymous emails that they had received containing threats of violence and sexual assault and misogynistic and racist language.²⁴⁴

While there has been a rise of negative consequences as a result individuals' online opinions regarding the Israel-Hamas war (see B4), there have been no reports of widespread threats of violence or actual violence as a result of individuals' online opinions on the issue.

The highly praised 2016 landmark civil court decision—in which a man was ordered to pay C\$100,000 (\$74,000) to his former partner for publishing intimate videos of her without her consent, causing severe emotional distress—has grown in significance in recent years.²⁴⁵ Though the details of this case remained in flux following the early 2016 decision,²⁴⁶ the privacy tort of “public disclosure of private facts” that the judge’s original decision established has since been adopted in several courts. The new tort was applied in a 2018 case, in which an individual was found liable for posting a sexually explicit video of a person without their consent on a pornographic website; they were ordered to pay C\$100,000 (\$74,000) in damages.²⁴⁷ The new tort was also applied in a different province for the first time in September 2021, when the Court of King’s Bench of Alberta (then the Court of the Queen’s Bench) used the tort in awarding C\$185,000 (\$137,000) in damages to a victim of nonconsensual distribution of intimate images.²⁴⁸

The 2016 case continues to be cited by other plaintiffs, authors, and courts.²⁴⁹ The Saskatchewan Court of King’s Bench, for instance, first recognized the tort of “public disclosure of private facts” in a September 2022 decision, awarding damages of C\$160,000 (\$118,000) to a victim whose husband uploaded intimate images of her to a pornographic website without her consent.²⁵⁰ There are also increasing calls for tech companies to take aggressive action in removing private material published without consent²⁵¹ and to face criminal penalties should they not do so.²⁵² The Online Harms Act (see B3) addresses this issue, as “intimate content communicated without consent” is one of the seven targeted harms.

Pornhub, a Montreal-based pornography platform, has faced numerous lawsuits in Canada and the United States accusing it of profiting from underage nonconsensual intimate images.²⁵³ In October 2021, the company settled one lawsuit in the United States brought forward by 50 women plaintiffs who alleged that the platform had knowingly partnered with a pornography

as verbal threats, travel restrictions, nonconsensual sharing of intimate images, doxing, or property destruction or confiscation—in relation to their online activities?

- Are individuals subject to online intimidation and harassment specifically because they belong to a certain ethnic, religious, gender, LGBT+, migrant, diaspora, or other relevant group?
- Have online journalists, commentators, or others fled the country, gone into hiding, or undertaken other drastic actions to avoid such consequences?
- Have the online activities of dissidents, journalists, bloggers, human rights defenders, or other individuals based outside the country led to repercussions for their family members or associates based in the country (i.e., coercion-by-proxy)?

²⁴² Statistics Canada (Mila Kingsbury and Rubab Arim), “Cybervictimization and mental health among Canadian youth,” September 20, 2023, <https://www150.statcan.gc.ca/n1/pub/82-003-x/2023009/article/00001-eng.htm>.

²⁴³ Statistics Canada (Darcy Hango), “Online harms faced by youth and young adults: The prevalence and nature of cybervictimization,” February 21, 2023, <https://www150.statcan.gc.ca/n1/pub/75-006-x/2023001/article/00003-eng.htm>.

²⁴⁴ Christian Paas-Lang, “Chrystia Freeland latest target of public threats, intimidation against women in Canadian politics,” CBC News, August 27, 2022, <https://www.cbc.ca/news/politics/harassment-women-public-life-journalists-politicians-1.6564376>

²⁴⁵ “Doe 464533 v N.D., 2016 ONSC 541,” CanLII, January 21, 2016, <http://canlii.ca/t/gn23z>.

²⁴⁶ “Doe v N.D., 2016 ONSC 4920,” CanLII, September 16, 2016, <https://www.canlii.org/en/on/onsc/doc/2016/2016onsc4920/2016onsc4920.html>; “Doe 464533 v N.D., 2017 ONSC 127,” CanLII, January 9, 2017, <https://www.canlii.org/en/on/onsc/doc/2017/2017onsc127/2017onsc127.html>.

²⁴⁷ Jane Doe 72511 v. Morgan, 2018 ONSC 6607; See also: Omar Ha-Redeye, “Public Disclosure of Private Facts – Redux,” *Slaw.ca*, November 11, 2018, <http://www.slaw.ca/2018/11/11/public-disclosure-of-private-facts-redux/>.

²⁴⁸ ES v. Shillington, 2021 ABQB 739, <https://www.canlii.org/en/ab/abqb/doc/2021/2021abqb739/2021abqb739.html>.

²⁴⁹ Omar Ha-Redeye, “Public Disclosure of Private Facts – Redux,” *Slaw.ca*, November 11, 2018, <http://www.slaw.ca/2018/11/11/public-disclosure-of-private-facts-redux/>.

²⁵⁰ S.B. v D.H., 2022 SKKB 216, <https://www.canlii.org/en/sk/skbb/doc/2022/2022skkb216/2022skkb216.html?resultIndex=1>; Tanner E. Oscapeella and Lane Aman, “Saskatchewan is the Next Province to Recognize the Privacy Tort of ‘Public Disclosure of Private Facts,’” *Whitelaw-Twining*, December 13, 2022, <https://wt.ca/saskatchewan-is-the-next-province-to-recognize-the-privacy-tort-of-public-disclosure-of-private-facts/>.

²⁵¹ Karen Pauls, “Woman who spent years scrubbing explicit video from internet urges tech firms to make it easier to remove,” CBC News, December 1, 2020, <https://www.cbc.ca/news/canada/manitoba/canada-internet-children-abuse-pornography-1.582042>.

²⁵² Christopher Reynolds, “Survivors, NGOs call for criminal investigation of porn giant MindGeek,” CBC News, March 4, 2021, <https://www.cbc.ca/news/politics/calls-for-criminal-investigation-mindgeek-1.5937117>.

²⁵³ Selena Ros, “New lawsuit against Pornhub alleges improvements to the site don’t go far enough,” CTV News, February 13, 2021, <https://montreal.ctvnews.ca/new-lawsuit-against-pornhub-alleges-improvements-to-the-site-don-t-go-far-enough-1.5308001>.

provider that uploaded sexually explicit videos of the plaintiffs without their consent.²⁵⁴ These issues have been brought to the forefront again in light of Pornhub's March 2023 sale to a Canadian private equity firm,²⁵⁵ as well as a Netflix documentary released around the same time as the sale.²⁵⁶

Additionally, many provinces, including Manitoba²⁵⁷ and Alberta,²⁵⁸ have previously passed laws that create civil torts for unauthorized distribution of intimate images and videos, and British Columbia also enacted legislation to do so and which also includes applications to have the material removed in March 2023,²⁵⁹ which came into effect during the coverage period in January 2024.²⁶⁰ Individuals are still prosecuted under Section 162.1 of the Criminal Code, which makes it a crime to publish, distribute, transmit, or sell intimate images without the consent of the person depicted.²⁶¹ In 2022 alone, there were 2,524 criminal incidents of nonconsensual distribution of intimate images in Canada.²⁶²

	2022	2023	2024
C8: Are websites, governmental and private entities, service providers, or individuals subject to widespread hacking and other forms of cyberattack? (0–3 points)	2	2	2

Cyberattacks and data breaches have become a serious issue in Canada, generally rising in number every year. During the 2022–23 period, the OPC received 681 data breach reports under PIPEDA, an increase of 6 percent from the previous year.²⁶³ Since a PIPEDA requirement that private companies report data breaches to the OPC came into effect in 2018 (see C6), the number of reports of such breaches has increased by 600 percent, according to the 2020–21 annual report.²⁶⁴ Whether the number of breaches is actually increasing or the mandatory reporting requirement has led to more accurate data is unclear; however, it is generally felt that cybercrime in Canada is still a bigger problem than the statistics reveal due to underreporting.²⁶⁵

Certain federally regulated industries are not covered by the mandatory breach reporting requirements found in PIPEDA. To fill this hole and provide for a more secure infrastructure generally, in June 2022, the federal government advanced Bill C-26, which would enact the Critical Cyber Systems Protection Act (CCSPA).²⁶⁶ The legislation would create new cybersecurity regulations, such as mandatory breach reporting and requirements to create cybersecurity programs, for critical infrastructure designated “vital services” or “vital systems,” including telecommunications, energy, finance, and transportation.²⁶⁷ Analysts have noted that CCSPA is unprecedented because it would impose mandatory breach reporting requirements in the

C8 sub-questions:

- Have websites belonging to opposition, news outlets, or civil society groups in the country been temporarily or permanently disabled due to cyberattacks, particularly at politically sensitive times?
- Are websites, news outlets, blogs, or social media accounts subject to targeted technical attacks as retribution for posting certain content, for example on political and social topics?
- Are financial, commercial, and governmental entities subject to significant and targeted cyberattacks meant to steal data or disable normal operations, including attacks that originate outside the country?
- Do specific laws, policies, or independent bodies prevent and protect against cyberattacks (including systematic attacks by domestic nonstate actors)?

²⁵⁵ Reuters, “French minister to raise protection of minors with Pornhub's new owners,” Yahoo! Finance, March 17, 2023, <https://finance.yahoo.com/news/french-minister-raise-protection-minors-142451061.html>.

²⁵⁶ Ellie Muir, “Netflix's Pornhub documentary glosses over one major thing: the fetishisation of childlike bodies,” The Independent, March 18, 2023, <https://www.independent.co.uk/life-style/money-shot-netflix-pornhub-b2303558.html>.

²⁵⁷ “Intimate Image Protection Act, C.C.S.M. c. I87,” October 1, 2020, <https://web2.gov.mb.ca/laws/statutes/ccsm/pdf.php?cap=i87>.

²⁵⁸ “Protecting Victims of Non-Consensual Distribution of Intimate Images Act, S.A. 2017 ch. P-26.9,” August 4, 2017, <http://www.qp.alberta.ca/documents/Acts/P26p9.pdf>.

²⁵⁹ Legislative Assembly of British Columbia, Bill No. 12, “Intimate Images Protection Act,” March 30, 2023, <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/progress-of-bills>.

²⁶⁰ Chad Pawson, “Act now in force in B.C. to help remove intimate images posted online without consent,” January 29, 2024, CBC News, <https://www.cbc.ca/news/canada/british-columbia/intimate-images-act-b-c-civil-rights-tribunal-how-to-remove-images-1.7096179>.

²⁶¹ “R. v. P.S.D., 2016 BCPC 400,” CanLII, December 12, 2016, <https://www.canlii.org/en/bc/bcpc/doc/2016/2016bcpc400/2016bcpc400.html>; See also: “R. v. A.C., 2017 ONCJ 129,” CanLII, February 16, 2017, <https://www.canlii.org/en/on/oncj/doc/2017/2017oncj129/2017oncj129.html?resultIndex=1>.

²⁶² Statistics Canada, Table 35-10-0177-01, “Incident-based crime statistics, by detailed violations, Canada, provinces, territories, Census Metropolitan Areas and Canadian Forces Military Police,” <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.257&cubeTimeFrame.startYear=2022&cubeTimeFrame.endYear=2022&referencePeriods=20220101%2C20220101>.

²⁶³ OPC's Annual Report, “Protecting and promoting privacy in a digital world,” September 19, 2023, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202223/ar_202223/.

²⁶⁴ OPC 2020–21 Annual Report, “Projecting our values into laws,” December 9, 2021, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202021/ar_202021/.

²⁶⁵ See e.g. Jad Saliba, “Cybercrime is bigger in Canada than we know — and that's the problem,” Financial Post, December 9, 2022, <https://financialpost.com/fp-finance/cybercrime-underreported-canada>.

²⁶⁶ Parliament of Canada, “Bill C-26: An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts,” accessed September 2023, <https://www.parl.ca/legisinfo/en/bill/44-1/c-26>.

²⁶⁷ See e.g. Fasken Cyber-Bulletin, “Bill C-26: New Cybersecurity Requirements in Critical Infrastructure,” June 23, 2022, <https://www.fasken.com/en/knowledge/2022/06/23-new-cybersecurity-requirements-in-critical-infrastructure>.

context of national security, rather than personal data protection, as is the case under PIPEDA.²⁶⁸ The bill completed its second reading in the House of Commons in March 2023, though its progress is stalled as it finished consideration in a Parliamentary committee as of April 2024.²⁶⁹

Statistics Canada reported that 70 percent of internet users suffered some sort of cybersecurity incident during 2022, up from 58 percent in 2020.²⁷⁰ About one-fifth of Canadian businesses were impacted by cybersecurity incidents in 2021,²⁷¹ when the financial cost of data breaches to businesses hit an all-time high.²⁷² A 2022 survey by the Canadian Internet Registration Authority (CIRA) indicated that 29 percent of respondent organizations had experienced a breach of customer or employee data, or both, within the previous year.²⁷³ A Statistics Canada report released in July 2023 stated that as a result of increased cyber incidents and the increase of online activities as a result of the COVID-19 pandemic, businesses have significantly increased their spending on cybersecurity.²⁷⁴

In March 2022, a University of Toronto–based Citizen Lab report on digital transnational repression in Canada found that foreign dissidents and activists living in Canada, after fleeing their countries of origin to evade repression, had increasingly been the targets of hacking and phishing attempts and experienced takeovers of their social media and email accounts in recent years. Some reported having cut off contact with friends and relatives in their countries of origin out of concern for their safety in the face of such attempts.²⁷⁵

Major Canadian companies have recently been subject to cyberattacks and data breaches. In November 2022, the Sobeys grocery chain was the victim of an unspecified cyberattack—reportedly ransomware—that it estimated would cost C\$25 million (\$18.48 million) in losses. The attack closed the store’s pharmacies for four days and disrupted other services for about a week.²⁷⁶ In early 2022, an IKEA Canada data breach affected almost 100,000 Canadians.²⁷⁷ The OPC continues to find that Canadians are affected by international data breaches, including data breaches at MGM Resorts International and Marriott International.²⁷⁸ During the coverage period, there were no major incidents in the private sector, but smaller data breaches were reported at Canada’s national airline Air Canada²⁷⁹ and Laurentian University.²⁸⁰

An August 2023 report from the government’s Canadian Centre for Cyber Security (CCCS) warned that Canada’s security and economy will remain under threat from organized cybercrime groups in the coming years.²⁸¹ The report identified Russia and Iran as major sources of cybercrime, acting as a base of operations for cybercriminals. The report claimed that “Russian intelligence services and law enforcement almost certainly maintain relationships with cybercriminals and allow them to operate with near impunity.” Ransomware was identified as the

²⁶⁸ Eugen Miscoi, Daniel G.C. Glover, and Charles S. Morgan, “Bill C-26: Introduction of New Mandatory Breach Reporting Requirements in Canada,” McCarthy Tetrault, June 15, 2022, <https://www.mccarthy.ca/en/insights/blogs/techlex/bill-c-26-introduction-new-mandatory-breach-reporting-requirements-canada>.

²⁶⁹ Parliament of Canada, “Bill C-26: An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts,” accessed September 2023, <https://www.parl.ca/legisinfo/en/bill/44-1/c-26>.

²⁷⁰ Statistics Canada, “Canadian Internet Use Survey, 2022,” July 20, 2023, <https://www150.statcan.gc.ca/n1/daily-quotidien/230720/dq230720b-eng.htm>.

²⁷¹ Statistics Canada, “Impact of cybercrime on Canadian businesses, 2021,” October 18, 2022, <https://www150.statcan.gc.ca/n1/daily-quotidien/221018/dq221018b-eng.htm>.

²⁷² Amanda Stephenson, “Cost of data breaches in Canada hit new record in 2021: IBM,” CTV News, July 28, 2021, <https://calgary.ctvnews.ca/cost-of-data-breaches-in-canada-hit-new-record-in-2021-ibm-1.5526127>.

²⁷³ CIRA, “2022 CIRA Cybersecurity Survey,” August 2022, <https://www.cira.ca/resources/cybersecurity/report/2022-cira-cybersecurity-survey>.

²⁷⁴ Statistics Canada (Gabrielle Asselin and Howard Bilodeau), “The changing landscape of cyber security following the COVID-19 pandemic,” July 11 2023, <https://www150.statcan.gc.ca/n1/pub/22-20-0001/222000012023001-eng.htm>.

²⁷⁵ Noura Al-Jizawi, Siena Anstis, Sophie Barnett, Sharly Chan, Niamh Leonard, Adam Senft, and Ron Deibert, “Psychological and Emotional War: Digital Transnational Repression in Canada,” CitizenLab, March 1, 2022, https://citizenlab.ca/wp-content/uploads/2022/03/Report151-dtr_022822.pdf

²⁷⁶ Paul Withers, “Major Canadian grocery chain says cyberattack cost \$25 million,” CBC News, December 15, 2022, <https://www.cbc.ca/news/canada/nova-scotia/sobeys-cyber-attack-25-million-1.6686838>.

²⁷⁷ Tomasia DaSilva, “Internal data breach discovered at Ikea Canada impacts 95,000 Canadians,” Global News, May 5, 2022, <https://globalnews.ca/news/8812708/ikea-canada-internal-data-breach-95000-records/>.

²⁷⁸ OPC, “A pivotal time for privacy,” September 29, 2022, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202122/ar_202122/.

²⁷⁹ Canadian Press, “Air Canada system briefly breached, customer info and flight ops unaffected,” CTV News Montreal, September 25, 2023, <https://montreal.ctvnews.ca/air-canada-system-briefly-breached-customer-info-and-flight-ops-unaffected-1.6571066>.

²⁸⁰ CBC News Staff, “Laurentian University confirms some personal data compromised by cyber incident,” CTV News, March 6, 2024, <https://www.cbc.ca/news/canada/sudbury/laurentian-university-cyber-incident-data-breach-1.7135372>.

²⁸¹ Peter Zimonjic, “Criminal hackers ‘very likely’ to pose threat to national security, economy in near term: report,” CBC News, August 28, 2023, <https://www.cbc.ca/news/politics/hackers-threat-national-security-1.6949645>. Original report: Canadian Centre for Cyber Security, “Baseline cyber threat assessment: Cybercrime,” August 28, 2023, <https://www.cyber.gc.ca/en/guidance/baseline-cyber-threat-assessment-cybercrime>.

most destructive form of cybercrime in the country.

In December 2022, during the previous coverage period, Amnesty International Canada announced that it was the victim of a suspected Chinese state-sponsored cyberattack two months earlier, in October. The attack was reportedly intended to surveil the work of the organization and to obtain personal information about the individuals who collaborate with it.²⁸² Amnesty stated that no donor or membership data had been breached in the attack.²⁸³

Cyberattacks and data breaches have also affected federal government agencies and actors in recent years. In August 2020, the Canada Revenue Agency (CRA), the federal department that oversees taxation and other financial services, suffered multiple significant cyberattacks that compromised the usernames and passwords of thousands of online accounts,²⁸⁴ which led the CRA to lock out 800,000 Canadians from their accounts as a precautionary measure in March 2021.²⁸⁵ In August 2022, the Federal Court granted the certification of a class of victims of the data breach, allowing a class action lawsuit against the CRA and other government departments to move forward;²⁸⁶ the case is ongoing with no trial date yet set. The OPC reported that breach reports received from the public sector had dropped from 463 during the 2021–22 fiscal year to 298 in 2022–23, a decrease of 36 percent.²⁸⁷ The drop is potentially due to the absence of mandatory data breach reporting in the public sector (see C6). Even the computer system of the governor general (Canada's official head of state) was hacked in 2021.²⁸⁸

Federal entities continued to be targeted by cyberattacks during the current coverage period. In January 2024, there was a data breach at Global Affairs Canada that reportedly compromised the personal information of certain users, including employees.²⁸⁹ The following month, the OPC opened an investigation into the matter to assess Global Affairs' compliance with the Privacy Act.²⁹⁰ FINTRAC (Financial Transactions and Reports Analysis Centre), Canada's financial intelligence unit and anti-money laundering and anti-terrorist financing supervisor, was forced to shut down its systems temporarily in March 2024 following a cyber-incident, and the RCMP was also hit by a cyber-event around the same time.²⁹¹ Considering the sensitive nature of those agencies, details of the incidents are scarce.

A report issued by Canada's auditor-general just after the coverage period in June 2024 indicated that the RCMP and various other security agencies do not have the capacity or capabilities necessary to effectively monitor and police cybercrime.²⁹²

²⁸² Murray Brewster, "Amnesty International Canada hit by cyberattack out of China, investigators say," CBC News, December 5, 2022, <https://www.cbc.ca/news/politics/amnesty-international-canada-cyber-attack-china-1.6674788>.

²⁸³ Amnesty International Canada, "Amnesty International Canada target of sophisticated cyber-attack linked to China," December 5, 2022, <https://amnesty.ca/press-releases/cyber-breach-statement/>.

²⁸⁴ Rachel D'Amore, "What to know (and do) about the CRA breach and shutdown," Global News, August 17, 2020, <https://globalnews.ca/news/7281074/cra-hack-online-services/>.

²⁸⁵ Rachel Aiello, "CRA locking 800K Canadian taxpayers out of accounts," CTV News, March 12, 2021, <https://www.ctvnews.ca/canada/cra-locking-800k-canadian-taxpayers-out-of-accounts-1.5345069>.

²⁸⁶ Sweet v. Canada, 2022 FC 1228, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522064/index.do>.

²⁸⁷ OPC 2021-22 Annual Report, "A pivotal time for privacy," September 29, 2022, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202122/ar_202122/.

²⁸⁸ Raisa Patel, "Gov. Gen. Mary Simon's office says its internal network was hacked," *The Toronto Star*, December 2, 2021, <https://www.thestar.com/politics/federal/2021/12/02/gov-gen-mary-simons-office-says-its-internal-network-was-hacked.html>.

²⁸⁹ Spencer Van Dyk, "Data breach at Global Affairs Canada affecting some users' personal information," CTV News, January 30, 2024, <https://www.ctvnews.ca/politics/data-breach-at-global-affairs-canada-affecting-some-users-personal-information-1.6748693>.

²⁹⁰ OPC Announcement, "Privacy Commissioner to investigate privacy breach at Global Affairs Canada," February 26, 2024, https://www.priv.gc.ca/en/opc-news/news-and-announcements/2024/an_240226/.

²⁹¹ Nathaniel Dove, "Cyber attacks are getting easier, experts warn after 3rd federal incident," March 5, 2024, Global News, <https://globalnews.ca/news/10336867/canadian-cyber-attacks-rise/>.

²⁹² Catharine Tunney, "Canadian agencies do not have the capacity or capability to police cybercrime: AG," CBC News, June 04, 2024, <https://www.cbc.ca/news/politics/cyber-crime-rcmp-ag-1.7223887>.

